*Together with Nos. 471 & 472, U. S. v. Bankers Trust Co.

CLERK'S COPY

20

See also cases Nos. 471. 472 - 531 - 532

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1934.

No. 270

NORMAN C. NORMAN, PETITIONER,

vs.

THE BALTIMORE AND OHIO RAILROAD COMPANY.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK.

PETITION FOR CERTIORARI FILED AUGUST 8, 1934.

CERTIORARI GRANTED OCTOBER 8, 1934.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No.

NORMAN C. NORMAN, PETITIONER,

vs.

THE BALTIMORE AND OHIO RAILROAD COMPANY

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK

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IN COURT OF APPEALS OF NEW YORK

NORMAN C. NORMAN, Plaintiff-Appellant,
against
THE BALTIMORE AND OHIO RAILROAD COMPANY, Defendant-Respondent

STATEMENT UNDER RULE 234

This action was commenced by the service of a summons and complaint upon the defendant on February 1st, 1934. The complaint was duly amended on March 9, 1934. Defendant served its answer to the amended complaint and issue was joined by the service of plaintiff's reply on March 9th, 1934.

The full name of the parties appears in the above title. There has been no change of parties or of attorneys herein.

[fol. 2] IN SUPREME COURT OF NEW YORK

NORMAN C. NORMAN, Plaintiff,
against
THE BALTIMORE AND OHIO RAILROAD COMPANY, Defendant

NOTICE OF APPEAL TO APPELLATE DIVISION

SIRS: Please take notice, that the plaintiff hereby appeals to the Appellate Division of the Supreme Court, for the First Judicial Department, from the judgment entered in the office of the Clerk of the County of New York on the 20th day of March, 1934, in favor of plaintiff and against the said defendant, for the sum of Twenty-two and 50/100 ($22.50) Dollars, and from the order entered in said office on said date, denying plaintiff's motion in all respects to strike out the affirmative defense contained in the answer, and for judgment on the pleadings from each and every part of said judgment and order.

Dated New York, March 20th, 1934.

Yours, etc., Dwyer & Redfield, Attorneys for Plaintiff, Office & P. O. Address: 420 Lexington Avenue, Borough of Manhattan, City of New York.

[fol. 3] To Cravath, de Gersdorff, Swaine & Wood, Esqs., Attorneys for Defendant, 15 Broad Street, New York City, Clerk of the County of New York.

IN SUPREME COURT OF NEW YORK

NOTICE OF MOTION FOR ORDER STRIKING OUT PORTIONS OF DEFENDANT'S ANSWER, ETC.

SIRS: Please take notice, that upon the pleadings herein, the undersigned will move this Court at a Special Term Part III thereof, to be held at the County Courthouse, in and for the County of New York, on the 14th day of March, 1934, at ten o'clock in the forenoon or as soon thereafter as counsel can be heard, for an order striking out the separate and distinct defenses, contained in paragraphs marked "Second" and "Third" in defendant's answer, consisting of new matter, on the ground that it appears on the face of said defenses that the same are insufficient in law, in that the laws, resolutions, proclamations, regulations and orders, as pleaded, in so far as they apply to the issues in this action, are unconstitutional in that they were enacted beyond the powers conferred by the Constitution [fol. 4] of the United States, and that they are violative of Amendment Five, Amendment Ten and Article 1, Section I of the Constitution of the United States, and for a further order directing judgment on the pleadings, pursuant to Rule 112 of the Rules of Civil Practice, and for such other and further relief as to the Court may seem just.

Dated New York, March 9th, 1934.

Yours, etc., Dwyer & Redfield, Attorneys for Plaintiff, Office & P. O. Address: 420 Lexington Avenue, Borough of Manhattan, City of New York.

To Cravath, de Gersdorff, Swaine & Wood, Esqs., Attorneys for Defendant, No. 15 Broad Street, New York, N. Y.

IN SUPREME COURT OF NEW YORK

SUMMONS

To the above named Defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer, or, if the

[fol. 5] complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney within twenty days after the service of this summons, exclusive of the day of service. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated February 1st, 1934.

Dwyer & Redfield, Attorneys for Plaintiff, Office and Post Office Address: 420 Lexington Avenue, New York City.

IN SUPREME COURT OF NEW YORK

AMENDED COMPLAINT

The plaintiff, Norman C. Norman, complaining of the defendant, for his amended complaint, by his attorneys, Dwyer & Redfield respectfully alleges:

First: That at all times hereinafter mentioned, the plaintiff was and still is a citizen of the State of New York and of the United States of America.

[fol. 6] Second: That at all times hereinafter mentioned, the defendant was and still is a railroad corporation, duly organized under the laws of the State of Maryland, in the United States of America.

Third: That on or about the 1st day of February, 1930, the plaintiff purchased from the defendant, and is still the holder and owner of its certain gold bond in the principal sum of One thousand ($1,000) Dollars dated the first day of February, 1930, and designated by it as number 14569 of Thirty-Year 4½% Convertible Gold Bond, and due February 1, 1960. A copy of said bond is hereto annexed and is made a part hereof.

Fourth: That the defendant in its said obligation agreed to pay the holder thereof interest at the rate of four and one-half per cent per annum semi-annually on the first days of February and August of each year, upon presentation and surrender of the interest coupons annexed to the aforesaid bond, as they shall severally mature, payment of the principal and interest on the said bond to be made by the defendant at its office or agency in the Borough of Man-

hattan, City of New York, in gold coin of the United States of America, of or equal to the standard of weight and fineness existing on February 1st, 1930.

Fifth: That on the first day of February, 1930, the standard weight and fineness of a gold dollar of the United [fol. 7] States of America as a unit of value was fixed to consist of twenty-five and eight-tenths grains of gold, nine-tenths fine pursuant to the Act of Congress dated March 14th, 1900. (31 Stat. L-45.)

Sixth: That pursuant to the terms of said bond there became due and owing to the plaintiff from the defendant, on the first day of February, 1934, the sum of Twenty-two Dollars and Fifty cents, as interest on said bond, payable in gold as aforesaid.

Seventh: That on the first day of February, 1934, the plaintiff, by his agent, duly presented to the defendant and surrendered to the defendant, the aforesaid interest coupon annexed to the aforesaid bond, at its office in the Borough of Manhattan, City and State of New York, in the United States of America, and duly demanded of the defendant the payment of said sum in gold as provided for in said bond, and as hereinbefore mentioned, or its equivalent value in legal tender, existing on the first day of February, 1934.

Eighth: That the defendant refused to pay the aforesaid sum in gold, or the equivalent of gold in legal tender of the United States of America, existing on the first day of February, 1934.

Ninth: That by Act of Congress known as the "Gold Reserve Act of 1934" and by order of the President of the United States of America, acting pursuant to the authority vested in him by said Act, the standard unit of value of a [fol. 8] gold dollar of the United States of America was fixed to consist of fifteen and five-twenty-firsts grains of gold, nine-tenths fine from and after the thirty-first day of January, 1934.

Tenth: That the equivalent in legal tender of the United States existing on February 1st, 1934, of $22.50 in gold coin of the United States of the standard of weight and fineness existing on February 1st, 1930, was and still is $38.10.

Wherefore, plaintiff prays judgment of this Court:

1. That a declaration be made that upon the true construction of the bond aforesaid, the plaintiff is entitled, as holder thereof, to receive from the defendant from time to time by way of principal and interest thereunder and on the due dates of payment therefor, such a sum in gold, as represents the gold value of the nominal amount of each respective payment, such gold value to be ascertained in accordance with the standard of weight and fineness existing on the first day of February, 1930, and that accordingly, every gold dollar comprised in the nominal amount of each such payment, must be treated as representing the price in New York City in gold, calculated at due date of payment to consist of twenty-five and eight-tenths grains of gold, nine-tenths fine, specified in the "Act of Congress" dated March 14th, 1900, or any fraction thereof.

2. That a declaration be made in the alternative that the [fol. 9] plaintiff is entitled to receive upon such payments from the defendants, legal tender of the United States of America, equivalent in value to the gold of the standard weight and fineness existing on February 1st, 1930.

3. That such other and further declarations of the rights and legal relations of the parties to this action be made as shall be proper in the premises.

4. That further and consequential relief be awarded by judgment in favor of the plaintiff and directing the defendant to pay to the plaintiff the sum of $22.50 in gold coin of the United States of the standard of weight and fineness existing on February 1, 1930, together with interest thereon from February 1, 1934, or in the alternative, for the equivalent thereof in legal tender of the United States, to-wit, $38.10, with interest thereon from February 1, 1934.

5. Or in the alternative for a judgment in the sum of $38.10 with interest thereon from February 1, 1934.

6. And for such other and further relief as the plaintiff may be entitled to.

Dwyer & Redfield, Attorneys for Plaintiff, Office & P. O. Address: 420 Lexington Avenue, Borough of Manhattan, New York City.

(Verified and sworn to by Emanuel Redfield on March 8, 1934.)

[fol. 10] COPY OF BOND ANNEXED TO AMENDED COMPLAINT

United States of America

$1000 $1000

The Baltimore and Ohio Railroad Company

No. 14569. Thirty-Year 4½% Convertible Gold Bond Due February 1, 1960. No. 14569

The Baltimore and Ohio Railroad Company, a corporation of the State of Maryland (hereinafter called the Company), for value received, hereby promises to pay to the bearer, or, if this bond be registered, to the registered owner hereof, on February 1, 1960, the sum of One thousand dollars, and to pay interest on said sum from February 1, 1930, until the same shall be paid, at the rate of four and one-half per cent. (4½%) per annum, semi-annually on February 1 and August 1 in each year, upon presentation and surrender of the interest coupons hereto annexed as they shall severally mature. Payment of the principal of and interest on this bond will be made at the office or agency of the Company in the Borough of Manhattan, The City of New York, in gold coin of the United States of America of or equal to the standard of weight and fineness existing on February 1, 1930.

This bond is one of an issue of bonds of the Company, known as its Thirty-Year 4½% Convertible Gold Bonds [fol. 11] (hereinafter called the Bonds), limited to an aggregate principal amount at any one time outstanding not exceeding Sixty-three million thirty-one thousand dollars ($63,031,000), and all issued or to be issued under an indenture dated February 1, 1930, between the Company and Bank of Manhattan Trust Company, as trustee (hereinafter called the indenture), to which indenture reference is hereby made for a statement of the rights thereunder of the bearers and registered owners of the Bonds and of the bearers of the coupons appertaining thereto, and of the terms and conditions upon which the Bonds may be converted into common stock of the Company.

The Bonds are subject to redemption, at the election of the Company, as a whole but not in part, on February 1, 1936, or on any semi-annual interest payment date there-

after to and including February 1, 1955, at one hundred and five per cent of the principal amount thereof, or on any semi-annual interest payment date thereafter at their principal amount, plus a premium of one-half of one per cent of such principal amount for each six months period between the redemption date and February 1, 1960, in either case together with the interest accrued thereon to the date designated for redemption, upon at least sixty days previous notice by publication in a daily newspaper printed in the English language and published and of general circulation in the Borough of Manhattan, The City of New York, the first publication to be made not less than sixty nor more [fol. 12] than ninety days prior to the redemption date specified in such notice, all as provided in the indenture.

At the election of the bearer or registered owner of this bond and upon presentation hereof, with all unmatured appurtenant coupons, at the office or agency of the Company in the Borough of Manhattan, The City of New York, this bond may, subject to the provisions of the indenture, be converted at the principal amount hereof into shares (of the par value of one hundred dollars each) of the common stock of the Company (1) at any time on or after February 1, 1931, and before February 1, 1936, at the conversion price of $120 per share, (2) at any time on or after February 1, 1936, and before February 1, 1941, at the conversion price of $125 per share, and (3) at any time on or after February 1, 1941, and on or before February 1, 1946, at the conversion price of $130 per share, with a cash adjustment in each case of dividends and accrued interest, provided, however, that upon the occurrence of any of certain events set forth in the indenture such conversion prices may be reduced or, in case of consolidation, merger, sale of assets, or change of par value of stock, the conversion terms modified, all as in the indenture provided. In case the Bonds shall be redeemed on or after February 1, 1936, and on or before February 1, 1946, the right to convert shall continue up to the close of business on the fifteenth day prior to the date of redemption.

[fol. 13] In case an event of default as defined in the indenture shall happen, the principal of all the Bonds may become or be declared due and payable in the manner and with the effect provided in the indenture.

No recourse shall be had for the payment of the principal of or the interest on this bond, or any part thereof, or for any claim based hereon or otherwise in respect hereof or of the coupons appertaining hereto or of the indenture, against any incorporator, stockholder, officer or director, as such, past, present or future, of the Company or of any successor corporation, either directly or through the Company or any successor corporation, whether by virtue of any constitutional provision, statute or rule of law or by the enforcement of any assessment or otherwise, all such liability being by the acceptance hereof and as part of the consideration for the issue hereof expressly waived and released.

This bond shall pass by delivery unless registered in the name of the owner on the books of the Company at the office or agency of the Company in the Borough of Manhattan, The City of New York, such registration being noted hereon by or on behalf of the Company. After such registration, no transfer hereof shall be valid unless made at said office or agency by the registered owner hereof, in person or by duly authorized attorney, and similarly noted hereon; but this bond may be discharged from registration by a transfer in like manner to bearer, and thereupon transferability by de- [fol. 14] livery shall be restored; but this bond may again from time to time be registered or discharged from registration in the same manner. Such registration, however, shall not affect the negotiability of the coupons appertaining hereto, which shall continue to be transferable by delivery. The Company and the Trustee under the indenture may deem and treat the bearer, or, if this bond be registered, the registered owner, hereof as the absolute owner hereof for all purposes (except for the purpose of receiving payment of interest hereon), and neither the Company nor such Trustee shall be affected by any notice to the contrary.

This bond shall not be valid or become obligatory for any purpose until it shall have been authenticated by the execution by the Trustee under the indenture of the certificate hereon endorsed.

In witness whereof, The Baltimore and Ohio Railroad Company has caused this bond to be signed in its corporate name by its President or one of its Vice-Presidents, and its corporate seal to be hereunto affixed and to be attested by

its Secretary or one of its assistant Secretaries, and coupons for said interest, bearing a facsimile of the signature of its Treasurer, to be attached hereto, as of February 1, 1930.

The Baltimore and Ohio Railroad Company, by W. L. Smith, Vice-President.

Attest:

G. W. Greene, Assistant Secretary.

[fol. 15] IN SUPREME COURT OF NEW YORK

ANSWER

Defendant, by its attorneys, Messrs. Cravath, de Gersdorff, Swaine & Wood, for its answer to the amended complaint herein:

First. Admits each and every allegation contained in the amended complaint.

For a separate and complete defense to the amended complaint, defendant alleges:

Second. On information and belief, by Sec. 5 (b) of an Act of Congress entitled "An Act to define, regulate and punish trading with the enemy and for other purposes," approved October 6, 1917, an Act of Congress entitled "An Act to provide relief in the existing National Emergency in banking and for other purposes," approved March 9, 1933, Public Act No. 87 of the Seventy-third Congress known as "The Gold Reserve Act of 1934," approved on January 30, 1934, and by executive orders, proclamations and regulations made pursuant to said Acts, defendant has been, since prior to February 1, 1934, and is prevented and prohibited from obtaining gold coin of the United States, and by said Acts and said executive orders, proclamations and regulations, and by Public Resolution No. 10 of the Seventy-third Congress, entitled "A Joint Resolution to Insure Uniform Value to the Coins and Currency of the United States," ap-
[fol. 16] proved June 5, 1933, defendant has been, since prior to February 1, 1934, and is prevented and prohibited from paying either principal or interest on the bond described in the paragraph of the amended complaint desig-

nated "Third", or on any coupon appurtenant thereto, either in gold coin of the United States of the standard of weight and fineness existing February 1, 1930, or in gold coin of the United States of any other weight and fineness, or otherwise than dollar for dollar, in coin or currency of the United States (other than gold coin and gold certificates), which is at the time of the maturity of such bond or coupons legal tender for the payment of public and private debts, and by said Public Resolution No. 10 has been, since prior to February 1, 1934, and is authorized and required to discharge the principal and interest of such bond and coupons as the same may mature and become due, dollar for dollar, in any coin or currency of the United States, which at the time is legal tender for public and private debts, and not otherwise.

Third. On the first day of February, 1934, upon presentment and surrender at the office of defendant in the Borough of Manhattan, City and State of New York, by the plaintiff, through his agent, of the interest coupon maturing on February 1, 1934, described in the paragraph of the amended complaint designated "Seventh," defendant duly tendered to said agent, in payment of the interest covered by said coupon, Twenty-two dollars and fifty cents ($22.50) in coin and currency of the United States, other than gold coin and gold certificates. Said coin and currency so ten-
[fol. 17] dered were at the time legal tender for public and private debts, but said agent refused to accept the same.

Cravath, de Gersdorff, Swaine & Wood, Attorneys for Defendant, Office & P. O. address: No. 15 Broad Street, Borough of Manhattan, New York, N. Y.

(Verified and sworn to by W. R. Bixler on March 9, 1934.)

In Supreme Court of New York

Reply

The plaintiff, replying to the anwer of the defendant herein:

First: Admits each and every allegation contained in paragraph marked "Third" of the answer.

Wherefore, plaintiff demands the relief requested in the amended complaint herein.

Dwyer & Redfield, Attorneys for Plaintiff, Office & P. O. address: 420 Lexington Avenue, Borough of Manhattan, City of New York.

(Verified and sworn to by Emanuel Redfield on March 9, 1934.)

[fol. 18] In Supreme Court of New York

Memorandum of Court

By Mr. Justice Dore

Norman v. B. & O. R R.—Motion denied to the extent indicated in order submitted pursuant to court's decision in open court. Order signed.

In Supreme Court of New York

Order for Judgment—Filed March 20, 1934

Plaintiff having moved this Court for an order

(1) striking out the separate and distinct defense contained in the paragraphs marked "Second" and "Third" in defendant's answer to the amended complaint, consisting of new matter, on the ground that it appears upon the face of said defense that the same is insufficient in law, in that the laws, resolutions, proclamations, regulations and orders, as pleaded, in so far as they apply to the issues in this action are invalid under the Constitution of the United States, and

[fol. 19] (2) directing judgment on the pleadings, pursuant to Rule 112 of the Rules of Civil Practice, and at the argument of said motion, it having been stipulated in open court between the attorneys for the respective parties that the defendant shall be deemed to have made a cross-motion for judgment on the pleadings, and after hearing counsel for the respective parties, and after due deliberation thereon, the Court being of the opinion that

Public Resolution No. 10 of the Seventy-third Congress, approved June 5, 1933, and referred to in the paragraph marked "Second" of the answer to the amended complaint herein, providing that any obligation, theretofore or thereafter incurred, which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount of money of the United States measured thereby, "shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts," is valid under the Constitution of the United States.

Now, upon reading and filing the notice of plaintiff's motion herein dated March 4, 1934, and upon defendant's cross-motion as aforesaid, upon the amended complaint herein, verified March 8, 1934, upon the answer thereto verified March 9, 1934, and upon plaintiff's reply, verified March 9, 1934, and upon filing the opinion of the Court, it is,

Ordered that plaintiff's motion, in so far as it seeks an [fol. 20] order striking out the separate and distinct defence contained in the paragraphs marked "Second" and "Third" in defendant's answer be, and the same hereby is, in all respects denied; and it is further

Ordered that plaintiff is entitled to judgment on the pleadings in this action for the sum of Twenty-two Dollars and fifty cents ($22.50); and it is further

Ordered that plaintiff's motion for judgment on the pleadings in this action is denied in all other respects; and it is further

Ordered that the Clerk of this Court is hereby directed to enter judgment in this action in accordance with the provisions of this order.

Enter.

E. S. D., Justice of the Supreme Court of the State of New York.

[File endorsement omitted.]

IN SUPREME COURT OF NEW YORK

JUDGMENT APPEALED FROM

Upon the order of this Court made herein on the 17th day of March, 1934, and entered and filed on March 20,

1934, and all the papers upon which said order is based, [fol. 21] and upon the summons in this action dated February 1, 1934, it is

Adjudged that the plaintiff herein recover of the defendant the sum of Twenty-two Dollars and fifty cents ($22.50), and that plaintiff have execution therefor.

Judgment entered this 20th day of March, 1934.

Albert Marinelli, Clerk. (Seal.)

In Supreme Court of New York, County of New York

[Title omitted]

Notice of Appeal to Court of Appeals

Sirs: Please take notice, that pursuant to leave granted by the Appellate Division of the Supreme Court of the State [fol. 22] of New York, for the First Judicial Department, by an order duly made and filed therein on the 16th day of April, 1934, the above named plaintiff-appellant hereby appeals to the Court of Appeals of the State of New York from the order of the said Appellate Division entered in the office of the Clerk of the said Court the 9th day of April, 1934, and from the judgment of affirmance entered thereon in the office of the Clerk of the County of New York on the 10th day of April, 1934, which order affirmed the order of the Supreme Court denying plaintiff's motion in all respects, to strike out the affirmative defense contained in the answer; and for judgment on the pleadings, and from each and every part of said order and judgment.

Dated New York, April 16th, 1934.

Yours, etc., Dwyer & Redfield, Attorneys for Plaintiff-Appellant, Office & P. O. Address: 420 Lexington Avenue, Borough of Manhattan, City of New York.

To Cravath, de Gersdorff, Swaine & Wood, Esqs., Attorneys for Defendant-Respondent, 15 Broad Street, New York City. Clerk of the County of New York.

[fol. 22a] IN SUPREME COURT OF NEW YORK, APPELLATE DIVISION

Present: Hon. Edward R. Finch, Presiding Justice; Hon. Edgar S. K. Merrell, Hon. Alfred H. Townley, Hon. Edward J. Glennon, Hon. Irwin Untermyer, Justices.

ORDER OF AFFIRMANCE—April 9, 1934

An appeal having been taken to this Court by the plaintiff from the judgment of the Supreme Court, New York County, entered on the 20th day of March, 1934, and from an order entered in said Court on the 20th day of March, 1934, denying plaintiff's motion to strike out the separate and distinct defense contained in paragraph "Second" and "Third" in defendant's answer, and for judgment on the pleadings;

And said appeal having been argued by Mr. Emanuel Redfield of counsel for appellant, and by Mr. Frederick H. Wood of counsel for the respondent; and due deliberation having been had thereon,

It is hereby unanimously ordered and adjudged that the judgment and order so appealed from be, and the same are [fol. 22b] hereby, in all things, affirmed; and that the respondent recover of the appellant the costs of this appeal.

Finch, P. J., taking no part.

Enter.

E. R. F.

IN SUPREME COURT OF NEW YORK

JUDGMENT OF AFFIRMANCE

Plaintiff above named having appealed to the Appellate Division of the Supreme Court for the First Judicial Department from the order entered in the above-entitled action on March 20, 1934, denying plaintiff's motion to strike out the separate and distinct defenses contained in Paragraphs Second and Third in defendant's answer and for judgment on the pleadings and from the judgment entered thereon on March 20, 1934, adjudging that the

plaintiff recover of the defendant the sum of $22.50, and said Appellate Division having made an order and judgment on April 9, 1934, affirming the order and judgment appealed from in all respects and the remittitur having been filed in the Office of the Clerk of this Court,

Now, on motion of Messrs. Cravath, de Gersdorff, Swaine & Wood, attorneys for the defendant-respondent, it is hereby

Adjudged, that the order and judgment heretofore entered on March 20, 1934, be, and the same hereby are in all respects affirmed.

Judgment signed this 10th day of April, 1934.

Albert Marinelli, Clerk.

[fol. 23] In Supreme Court of New York, Appellate Division

Order Granting Leave to Appeal to the Court of Appeals —Filed April 16, 1934

The above named plaintiff, having moved for leave to appeal to the Court of Appeals from the order of this Court entered herein on the 9th day of April, 1934, and from the judgment entered therein,

Now, upon reading and filing the notice of motion, with proof of due service thereof, and the affidavit of Emanuel Redfield, in support of said motion, and the affidavit of Frederick H. Wood, in opposition thereto, and after hearing Mr. Emanuel Redfield, for the motion, and Mr. Frederick H. Wood, of counsel for the respondent, consenting to and joining in the application,

It is hereby ordered that the said motion be and the same hereby is granted, and this Court hereby certifies that in its opinion a question of law is involved which ought to be [fol. 24] reviewed by the Court of Appeals. Finch, P. J., taking no part.

Enter.

E. R. F.

[File endorsement omitted.]

IN SUPREME COURT OF NEW YORK

AFFIDAVIT OF NO OPINION

Emanuel Redfield, being duly sworn, says that he is one of the attorneys for the plaintiff-appellant and is familiar with all the proceedings had in this action.

That no opinion was rendered by any of the Courts herein.

Emanuel Redfield.

Sworn to this 19th day of April, 1934.

IN SUPREME COURT OF NEW YORK

STIPULATION WAIVING CERTIFICATION

It is hereby stipulated, that the aforegoing are true and correct copies of the notices of appeal, orders and judgments appealed from, and of all of the papers upon the Court below acted in making said orders and judgment now on file in the office of the Clerk of the County of New York, and certification thereof is hereby waived.

Dated New York, April 19th, 1934.

Dwyer & Redfield, Attorneys for Plaintiff-Appellant. Cravath, de Gersdorff, Swaine & Wood, Attorneys for Defendant-Respondent.

[fol. 25] IN COURT OF APPEALS OF NEW YORK

NORMAN C. NORMAN, Appellant,

ag'st

THE BALTIMORE AND OHIO RAILROAD COMPANY, Respondent

REMITTITUR—July 3, 1934

Be it remembered, That on the 23rd day of April, in the year of our Lord one thousand nine hundred and thirty-four Norman C. Norman, the appellant in this cause, came hereunto the Court of Appeals, by Dwyer & Redfield, his attorneys, and filed in the said Court a Notice of Appeal

and return thereto from the order and judgment of the Appellate Division of the Supreme Court in and for the First Judicial Department. And the Baltimore and Ohio Railroad Company, the respondent in said cause, afterwards appeared in said Court of Appeals by Cravath, de Gersdorff, Swaine & Wood, its attorneys,

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed,

Whereupon, The said Court of Appeals having heard this cause argued by Mr. Frederick H. Wood, of Counsel for the respondent, and submitted by counsel for the appellant, and after due deliberation had thereon, did order and adjudge that the judgment of the Appellate Division of [fol. 26] the Supreme Court appealed from herein be and the same hereby is affirmed with costs.

And it was also further ordered, that the record aforesaid, and the proceedings in this Court, be remitted to the said Supreme Court there to be proceeded upon according to law.

Therefore, It is considered that the said judgment be affirmed with costs as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, &c.

Wm. J. Armstrong, Clerk of the Court of Appeals of the State of New York.

Court of Appeals, Clerk's Office

Albany, July 3, 1934.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

Wm. J. Armstrong, Clerk. (Seal.)

[fol. 27] In Supreme Court of New York, Special Term—Part II

[Title omitted]

Order on Remittitur—July 9, 1934

Plaintiff above-named having appealed to the Court of Appeals of the State of New York pursuant to an order of the Appellate Division of the Supreme Court for the First Judicial Department made herein on the 16th day of April, 1934 granting leave to appeal from the order of said Appellate Division made and entered herein on the 9th day of April, 1934 and from the judgment entered upon said order in the office of the Clerk of the County of New York on the 10th day of April, 1934, which order and judgment affirmed the order of the Supreme Court, New York County, made on the 17th day of March, 1934, and entered in the office of the Clerk of the County of New York on the 20th day of March, 1934, and the judgment upon said order entered herein in the office of the Clerk of the County of New York on the 20th day of March, 1934, and after argument, said Court of Appeals having made an order and judgment on the 3rd day of July, 1934, affirming said order of said Appellate Division and the judgment entered thereon, with costs, and ordered that the record therein and the proceedings in said Court of Appeals be remitted to the Supreme Court, there to be proceeded upon according to law,

Now, upon reading and filing the remittitur of the said Court of Appeals, and upon motion of Cravath, de Gersdorff, Swaine & Wood, attorneys for the defendant herein, it is

Ordered and adjudged that the said order and judgment [fol. 28] of the Court of Appeals of the State of New York be, and the same hereby are, made the order and judgment of this Court.

Enter.

P. S., J. S. C.

[fol. 29] In Supreme Court of New York, New York County

Norman C. Norman, Plaintiff,

against

The Baltimore and Ohio Railroad Company, Defendant

Judgment on Remittitur

Plaintiff above named having appealed to the Court of Appeals of the State of New York, pursuant to an order of the Appellate Division of the Supreme Court for the First Judicial Department made herein on the 16th day of April, 1934, granting leave to appeal, from the order of said Appellate Division made and entered herein on the 9th day of April, 1934, and from the judgment entered upon said order in the office of the Clerk of the County of New York on the 10th day of April, 1934, which order and judgment affirmed the order of the Supreme Court, New York County, made on the 17th day of March, 1934, and entered in the office of the Clerk of the County of New York on the 20th day of March, 1934, and the judgment upon said order entered herein in the office of the Clerk of the County of New York on the 20th day of March, 1934, and after argument, said Court of Appeals having, on the 3rd day of July, 1934, ordered and adjudged that said judgment of said Appellate Division be affirmed, with costs, and having further ordered that the record therein and the proceedings in said Court of Appeals be remitted to the Supreme Court, there to be proceeded upon according to law, and the remittitur of the said Court of Appeals having been filed herein in the office of the Clerk of this Court on the 9th day of July, 1934, and an order having been entered herein on the 9th day of July, 1934, making said order and judgment of the Court of Appeals of the State of New York the order and judgment of this Court,

Now, on motion of Cravath, de Gersdorff, Swaine & Wood, attorneys for defendant herein, it is hereby

[fol. 30] Adjudged that the said orders and judgments hereinabove described be, and the same hereby are, in all respects affirmed.

Judgment signed this 9th day of July, 1934.

Albert Marinelli, Clerk. (Seal.)

[fols. 31 & 32] Reporter's Certificate to opinion omitted in printing.

Certificate of Chief Judge to reporter and clerk omitted in printing.

[fol. 33] In Court of Appeals of New York

Norman C. Norman, Appellant,

vs.

The Baltimore & Ohio Railroad Company, Respondent

Appeal by Permission of the Appellate Division, First Department, Affirming Judgment of Special Term

Emanuel Redfield for appellant.
Frederick W. Wood for respondent.

Opinion

Pound, Ch. J.:

The point for decision in this case depends upon the constitutionality of the joint resolution of Congress known as Public Resolution No. 10 of the Seventy-Third Congress, entitled, "Joint Resolution To Insure Uniform Value To The Coins and Currencies of the United States," approved June 5, 1933 (Mason's U. S. Code, Title 31, ch. 8, Sect. 430-4; 48 Stat. —), as related to the standard gold clause contained in a corporate bond issued by defendant for payment of principal and interest "in gold coin of the United States of America of or equal to the standard of weight and fineness existing on Feb. 1, 1930". The action is on a bond coupon calling for payment of $22.50. The complaint demands payment in gold, or its equivalent, which was alleged to be $38.10. Judgment was directed for $22.50 called for on the face of the coupon.

Defendant interposed as a defense Public Resolution No. 10 above cited, by which it was authorized and required to discharge the principal and interest of such bond and coupon in any coin or currency of the United States which at the time was legal tender for public and private debts

and not otherwise. The Court refused to strike out such defense.

In view of the enormous property value at stake and the possibility that Congress may stamp as legal tender such a vast quantity of paper money as potentially to destroy the value of all past promises to pay in the future, the decision of the Supreme Court of the United States on the question will be fraught with the gravest results. It is becoming that we should express our views on the question, even though the ultimate decision rests with the court of last resort on questions arising under the Federal Constitution.

No controlling authority may be found for the rule that the money power of Congress may make public currency legal tender for obligations expressly limited to payments in gold (cf. Matter of Missouri Pacific R. R. Co., U. S. [fol. 34] District Court, decided June 20, 1934, U. S. Law Week, June 26, 1934, index p. 945). The constitutionality of such legislation is sought, to be found in the delegated powers of Congress and the implied powers deduced therefrom. We must reason from the Constitution and decided cases to reach our conclusion.

Congress has power "to coin Money, regulate the Value thereof" (U. S. Const. Art. I, Sec. 8, para. 5). It also has power to enact laws necessary to enforce the Constitution (U. S. Const. Art. I, Sec. 8, Para. 18). It also has the power, prohibited to the States (U. S. Const. Art. I, Sec. 10, Para. 1) to impair contracts by the exercise of its lawful powers (Knox vs. Lee, 12 Wall. 457).

The contract sued on is payable in coin and not in commodities (Trebilcook vs. Wilson, 12 Wall. 687). It is a contract to pay money, none the less because it designates gold coin rather than other kinds of money which the law has made a legal tender in discharge of money obligations (Thompson v. Butler, 95 U. S. 694, 696, 697). The power to coin money and the general powers of sovereignty permit Congress to "make the notes of the government a legal tender in payment of private debts as necessary and proper for carrying into execution the powers vested by the Constitution in the Government of the United States." The question of the economic significance of the money power of Congress is a political one and not a judicial question

to be passed upon by the courts (Juilliard v. Greenman, 110 U. S. 421, 450).

The rule seems well established that Congress may establish a uniform national currency, declare of what it shall consist, endow that currency and every unit thereof with the character and qualities of money having a defined legal value by requiring its acceptance and its face value, as legal tender in the discharge of all debts, whether pre-existing or subsequently incurred, and to regulate the value of such money, unless by so doing property is or may be taken without due process of law.

It is contended that to subordinate the exercise of the Federal authority to the continuing operation of previous contracts would be to place, to this extent, the power to [fol. 35] coin money and regulate its value in the hands of private individuals and thus to impair the sovereign power delegated to the National Government (Philadelphia *P.* B. & W. R. R. Co. — Shubert, 224 U. S. 603).

Considerations of conveniences are not without weight. All arrangements for payment in money in the future are necessarily under the paramount authority of the political sovereign delegated powers of Congress. The courts should not interfere with the economic policies adopted by Congress, if such powers are vested in that body.

Those who would affirm the unconstitutionality of an act of Congress must do more than raise a doubt; they must do more than establish the unwisdom of the legislation; they must show clearly that it is in violation of the provisions of the Constitution.

State courts should uphold the constitutionality of such acts of Congress whenever possible. If the gold clause in contracts is an interference with the ability of the government to accomplish legitimate results it may well be argued that Congress may remove such interference without regard to consequences.

The choice of the means to accomplish a lawful purpose is a matter for Congress as long as the means are fairly related to the end. The scope of the money power of Congress is so wide that this court will not, in the case presented, venture to invalidate the legislation directed to that end.

The judgment should be affirmed with costs.

Crane, Lehman, and Hubbs, JJ., concur; O'Brien, J., dissents and votes to reverse; Crouch and Loughran, JJ., not sitting. Judgment affirmed.

[fol. 36] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 24] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 8, 1934

The petition herein for a writ of certiorari to the Supreme Court of the State of New York is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

See also cases Nos. 470-531-532

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 471

THE UNITED STATES OF AMERICA, RECONSTRUCTION FINANCE CORPORATION, ET AL., PETITIONERS

vs.

BANKERS TRUST COMPANY AND WILLIAM H. BIXBY, TRUSTEES

No. 472

THE UNITED STATES OF AMERICA, RECONSTRUCTION FINANCE CORPORATION, ET AL., PETITIONERS

vs.

BANKERS TRUST COMPANY AND WILLIAM H. BIXBY, TRUSTEES

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 17, 1934
CERTIORARI GRANTED NOVEMBER 5, 1934

United States Circuit Court of Appeals

EIGHTH CIRCUIT.

No. 10,071

IN BANKRUPTCY.

BANKERS TRUST COMPANY, ET AL., APPELLANTS,
vs.
RECONSTRUCTION FINANCE CORPORATION, A CORPORATION, ET AL., APPELLEES.

No. 10,116

IN BANKRUPTCY.

BANKERS TRUST COMPANY, ET AL., APPELLANTS,
vs.
RECONSTRUCTION FINANCE CORPORATION, A CORPORATION, ET AL., APPELLEES.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED SEPTEMBER 26, 1934.

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1 (Citation on Appeal Allowed by United States District Court and Service.)

The United States of America.

To Reconstruction Finance Corporation, a Corporation, United States of America, Angus McLean, Esq., Assistant Solicitor General, Guaranty Trust Company of New York, and Benjamin F. Edwards, Trustees Under First and Refunding Mortgage of Missouri Pacific Railroad Company, and Guy A. Thompson and L. W. Baldwin, Trustees in Reorganization of Missouri Pacific Railroad Company—Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals, Eighth Circuit, at St. Louis, Missouri, forty days from and after the day this Citation bears date, pursuant to an appeal filed in the Clerk's office of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, wherein Bankers Trust Company and William H. Bixby, Trustees of the St. Louis, Iron Mountain & Southern Railway Company River & Gulf Divisions First Mortgage, due May 1, 1933, complaining of a decree entered by this Court on July 6, 1934, entitled "On Petition of Trustees of Debtor and Others to Construe the Gold Clause in Bonds pleaded by Bankers Trust Company, special intervener", under St. Louis, Iron Mountain & Southern Railway Company River & Gulf Divisions First Mortgage, are appellants in error, and you are appellees to show cause, if any there be, why the judgment rendered against the said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Charles B. Faris, Judge of the District Courts of the United States for the Eastern District of Missouri, this 28th day of July, in the year of our Lord one thousand nine hundred and thirty-four.

C. B. FARIS,
United States District Judge,
For the Eastern District of Missouri.

No. 6935. United States District Court, Eastern Division of the Eastern Judicial District of Missouri. In the Matter of Missouri Pacific Railroad Company, Debtor. Citation. Filed Aug. 2, 1934. Jas. J. O'Connor, Clerk.

2 Received a copy of the attached Citation this 2nd day of August, 1934.

RECONSTRUCTION FINANCE CORPORATION, a Corporation,

STANLEY REED, Gen. Counsel,
By C. M. Clay, Counsel.

MAX O'RELL TRUITT,
GREEN, HENRY & REMMERS,
Attorneys for the Reconstruction Finance Corporation.

UNITED STATES OF AMERICA,
HARRY C. BLANTON,
U. S. Atty. Eastern Dist. Mo.,
By Irwin Sale, Asst. U. S. Atty.
Attorneys for the United States of America.

GUARANTY TRUST COMPANY OF NEW YORK and
BENJAMIN F. EDWARDS,
Trustees under the First and Refunding Mortgage of the Missouri Pacific Railroad Company,
By Nagel, Kirby, Orrick & Shepley,
Attorneys for Guaranty Trust Company of New York and Benjamin F. Edwards, Trustees under the First and Refunding Mortgage of the Missouri Pacific Railroad Company.

L. W. BALDWIN and
GUY A. THOMPSON,
Trustees in Reorganization of the Missouri Pacific Railroad Company,
By Edw. J. White, Attorney for L. W. Baldwin and Guy A. Thompson, Trustees in Reorganization of the Missouri Pacific Railroad Co.

Endorsed: Filed in U. S. District Court on Aug. 2, 1934.

4 (Petition of Missouri Pacific Railroad Company Stating That It Is Unable To Meet Its Debts, etc.)

In the District Court of the United States, Eastern Division, Eastern Judicial District of Missouri.

In the Matter of Missouri Pacific Railroad Company, Debtor. No. 6935.

To the Honorable the Judges of the District Court of the United States for the Eastern Division, Eastern Judicial District of Missouri:

The petition of Missouri Pacific Railroad Company, a railroad corporation, organized and existing under the laws of the State of Missouri, hereinafter referred to as the Debtor, respectfully represents:

First: That the Debtor is a railroad corporation duly organized and existing under the laws of the State of Missouri, and a citizen and resident of said State; and is a com-
5 mon carrier by railroad engaged in the transportation of persons and property in interstate commerce in the States of Missouri, Arkansas, Colorado, Illinois, Kansas, Louisiana and Oklahoma, and is not a street, suburban or interurban electric railway; that during the six months' period immediately preceding the filing of this petition the Debtor has had, and now has, its principal operating office in the City of St. Louis, Missouri, in the Eastern Division, Eastern Judicial District of Missouri.

Second: That there will become due on April 1, 1933 and within thirty days thereafter, the following:

Interest on obligations of the Debtor, due April 1, 1933, aggregating.....	$1,110,411.92
Taxes on property of the Debtor which will become subject to a penalty if not paid by April 10, 1933 (approximately)	1,295,000.00
Principal of, and interest on, obligations of the Debtor, or obligations which constitute a lien upon its property due April 30/May 1, 1933	38,183,918.86
Total	$40,589,330.78

That the Debtor is without funds to pay and discharge the aforesaid obligations as they mature, and on information and belief alleges that it has no means of borrowing or otherwise procuring such funds; that it is unable to meet its debts as

they mature, and desires to effect a plan of reorganization, pursuant to Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy.

6 Third: That a copy of this petition is this day being filed with the Interstate Commerce Commission.

Fourth: That the filing of this petition was duly authorized by the Debtor by resolution of the Executive Committee of the Board of Directors of the Debtor, adopted at a meeting thereof duly held on the 31st day of March, 1933.

Wherefore, your petitioner prays that an order may be entered approving this petition as properly filed under said Section 77, and that it be granted all other and further relief to which it may be entitled.

MISSOURI PACIFIC RAILROAD COMPANY,
By L. W. Baldwin, President.

Herbert Fitzpatrick,
John P. Murphy,
Paul J. Bickel,
Edw. J. White,
Attorneys for Debtor,
13th & Olive Sts.,
St. Louis, Missouri.

United States of America,
Eastern Judicial District of Missouri,
City of St. Louis, Missouri—ss.

L. W. Baldwin, being duly sworn, deposes and says that he is an officer, to-wit, the President, of Missouri Pacific Railroad Company, a corporation, the petitioning Debtor mentioned and described in the foregoing petition; that he
7 has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes them to be true.

L. W. BALDWIN.

Subscribed and sworn to before me this 31st day of March, 1933.

GEO. W. COLLINS,
Notary Public.

(Notarial Seal)

My commission expires June 27, 1933.

Filed March 31st, 1933. Jas. J. O'Connor, Clerk.

8 (Order of District Court Approving Petition of Missouri Pacific Railroad Company as Properly Filed Under Section 77 of Chapter VIII of Acts of Congress Relating to Bankruptcy.)

Upon due consideration of the petition of Missouri Pacific Railroad Company, the above named Debtor, verified March 31, 1933, and filed herein this day, stating that such Debtor is unable to meet its debts as they mature and that it desires to effect a plan of reorganization in accordance with Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, and the Court being satisfied that such petition complies with said Section and has been filed in good faith, it is Ordered:

(1) That said petition be, and it hereby is, approved as properly filed under Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy.

9 (2) That the Debtor be, and it hereby is, authorized and directed, pending further order of this Court in the premises, to run, manage, maintain, operate and keep in proper condition and repair the railroads and property of the Debtor, wherever situated, whether in this state, judicial circuit, or elsewhere, and to manage and conduct its business as a railroad company, and to this end to exercise its authority and franchises and discharge all public duties obligatory upon it, and to employ and discharge and fix the compensation of all officers, attorneys, managers, superintendents, agents and employees, to collect and receive the income, rents, revenues, tolls, issues and profits of said property, to collect all outstanding accounts and all dividends and interest on securities belonging to it, to make such advances to its subsidiary corporations as are necessary to protect the Debtor's interest therein, in the same manner that it would be entitled and bound to do in its own right, and to the extent necessary to protect and preserve the property of the Debtor to make and pay for additions and betterments to the railroads and property of the Debtor, all according to law, and subject to such supervision and control by the Court as the Court may exercise by further orders entered herein. The Debtor is authorized in its discretion from time to time until further order of this Court out of funds now or hereafter coming into its hands to pay:

(a) All taxes and assessments due or to become due upon the property of the Debtor.

(b) All necessary expenses of operating the railroads and conducting the business of the Debtor, including among other

expenses the wages, salaries and compensation of all
10 officers, attorneys, counsel, managers, superintendents,
agents or employees retained by the Debtor, ticket, traffic, car mileage and car per diem balances, interline accounts, freight and overcharge claims and amounts for car and equipment repairs as may become due to connecting or other railroad companies or other common carriers, including all sums now due or which may hereafter become due to other persons or corporations for the occupation or use, jointly or otherwise, of buildings, depots, terminals, tracks, side tracks, yards, warehouses, shops, bridges and other railroad facilities, and such sums as may be necessary to comply with the obligations of the Debtor under contracts by virtue of which said occupation or use may now or hereafter be enjoyed (but such payments shall not constitute affirmations of said contracts, or of any of them);

(c) The following claims incurred by the Debtor within six months preceding the date of this order, to-wit: Wages, salaries, fees and other charges due and payable for services rendered to the Debtor in the usual and customary operation of its properties and the conduct of its current business, unpaid material and supply accounts incurred in the operation of said properties, unpaid and outstanding pay checks and wage checks representing labor actually performed for the Debtor, and unpaid ticket, traffic, car mileage and car per diem balances, interline accounts, freight and overcharge claims and amounts for car and equipment repairs incurred by the Debtor;

(d) The cost of maintaining the corporate existence of the Debtor, including the necessary expenses of the preservation of records, and the registration and transfer of
11 its stocks and bonds and trustee's charges under indentures under which securities of the Debtor have been issued.

(3) The Debtor shall close its present books of account as of the close of business on March 31, 1933. The Debtor shall open new books of account as of the opening of business on April 1, 1933, and cause to be kept therein due and proper accounts of the earnings, expenses, receipts and disbursements of the Debtor, and shall preserve proper vouchers for all payments made on account thereof, and shall deposit the moneys coming into its hands in such of the banks in which funds of the Debtor are presently deposited as shall be selected by the Debtor, or in such other bank or banks as shall be selected by and approved by this Court.

(4) Within forty days after the entry of this order, the Debtor shall file with the Clerk of this Court a statement of the Assets and Liabilities of the Debtor as of the close of business on March 31, 1933, and on or before the last business day of each calendar month thereafter shall file with said Clerk a statement of the assets and Liabilities of the Debtor as of the close of business on the last day of the preceding month together with a summary statement of the revenues and expenses of the Debtor of the preceding calendar month. All such statements shall be certified as correct by the chief accounting officer of the Debtor.

(5) This Court reserves full right and jurisdiction to make from time to time such orders as the Court shall deem proper, appointing a trustee or trustees of all of said
12 Debtor's property and estate, with all the title and powers of such trustee or trustees under and subject to the provisions of the Acts of Congress relating to bankruptcy, including the power to operate the business of said Debtor, fixing the time within which any plan of reorganization shall be proposed, accepted and confirmed, requiring the Debtor to file such schedule and submit such information as may be necessary to disclose the conduct of the Debtor's affairs and the fairness of any proposed plan, fixing a reasonable time within which claims and interests of creditors and stockholders may be filed or evidenced and allowed, and the division of creditors and stockholders into classes according to the nature of their respective claims and interests, and in general such orders amplifying, extending, limiting or otherwise modifying this order as to the Court may at any time seem proper.

C. B. FARIS,
District Judge.

Dated March 31, 1933.

Filed March 31st, 1933. Jas. J. O'Connor, Clerk.

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16 Petition of Debtor for Advice Regarding Payment of Interest, Due May 1, 1933, on the River & Gulf Division First Mortgage Bonds of St. Louis, Iron Mountain & Southern Railway Company.

Comes now the Debtor in the above-entitled cause and respectfully presents to the Court:

First. That, on the 1st day of May, 1903, the St. Louis, Iron Mountain & Southern Railway Company made, executed and delivered to the Mercantile Trust Company of New

York (Bankers' Trust Company, successor,) and
17 William K. Bixby (Benjamin F. Edwards, successor,) as Trustees, its River & Gulf Division First Mortgage, to secure the payment of an authorized issue of $50,000,000.00 First Mortgage Bonds of said Railway Company, with interest thereon at the rate of four per cent per annum, payable semi-annually, on the first day of May and November of each year, said bonds to mature on the first day of May, 1933; that there are now issued and outstanding in the hands of the public, under said River & Gulf Division First Mortgage, bonds aggregating $34,548,000.00 face value.

That, on March 1, 1917, the Debtor herein purchased all of the property upon which said River & Gulf Division First Mortgage is now a first lien, under the final decree and order of this Court, approving the sale to the petitioner, in the receivership proceeding of the Union Trust Company of New York and Benjamin F. Edwards, Trustees, vs. St. Louis, Iron Mountain & Southern Railway Company, Defendant, Case No. 4485, which property, now forming a part of the Debtor's system of railroad, was sold and purchased, subject to the lien of [said mortgage].

That said mortgage is a first lien upon the following parts of Debtor's system of railroads:

Des Peres Bridge Junction, Mo., to Top of Incline, Mo.	.54
Top of Incline, Ill., to Dupo Junction, Ill.	4.12
Vulcan, Ill., to Southern Connection, Ill.	2.32
Valley Junction, Ill., to Thebes, Ill.	119.33
Connection at Chester, Ill., to Chester & Mt. Vernon H. B. No. 6	.04
Main Line Connection, Ill., to Chester & Mt. Vernon Connection, Ill.	.26
18 M. H. & L. Connection, near New Latour, Ark., to M. H. & L. Connection, near McGehee, Ark.	81.80
Halley, Ark., to Clayton Junction, La.	140.61
Gorham, Ill., to Benton, Ill.	40.58
Bush, Ill., to East Carterville, Ill.	10.48
East Carterville, Ill., to Marion, West Conn., Ill.	5.82
East Carterville, Ill., to End of Track, near Hafer, Ill.	2.33
Marion Jct., Ill., to End of Track.	.17
End of Track, near Herrin, Ill., to H. B. Herrin Extension, Ill.	.34
Marion, Ill., to Johnston City, Ill.	8.93
Connections at Herrin, Johnston City & Carterville, Ill.	2.16

Herrin Branch Connection, Ill., to M. & J. C. Connection, Ill.	4.81
Thebes Bridge Connection, Ill., to Thebes, Ill.	1.32
Connections at Thebes, Ill.	.11
Eudora, Ark., to Epps, La.	37.61
Cushman Branch Connection, Ark., to Carthage, Mo.	239.40
Crane, Mo., to Springfield, Mo.	35.28
C. R. I. & P. Connection, near Bridge Junction, Ark., to Marianna, Ark.	43.11
Total	781.47

That payment of said First Mortgage Bonds is also secured by first lien upon the following equipment:

29 Locomotives,
454 Gondola Cars,
22 Box Cars,
182 Coal Cars,
1 Flat Car,
19 1 Work Car,
4 Passenger Cars,
8 Electric Cars and
18 Ballast Cars and
Towboat Lockwood.

That payment of said First Mortgage bonds is also secured by deposit with said mortgage trustees of the following pledged securities:

	Par Value
853 Bonds, First Mortgage, Union Railway Company (of Memphis)	$1,000,000.00
1 Bond, First Mortgage, Western Coal & Mining Company	$1,000,000.00

That the present value of said 781.47 miles of railroad, together with the mortgaged equipment and securities before mentioned, is largely in excess of the face value of bonds now issued and outstanding under said mortgage.

Second. That both the principal and interest on said bonds mature May 1, 1933, the principal of said bonds being in the said sum of $34,548,000.00 and the interest thereon in the sum of $690,960.00.

That, under the terms and conditions of said mortgage, upon default, all the remedies set forth in said mortgage inure to the benefit of the Trustees thereof, among which is the option to said Trustees to sell said railroad and other mort-

gaged property at public auction to the highest bidder, or said Trustees may proceed to foreclose said mortgage, said sale to be made after advertisement as provided in said mortgage, or deed of trust, and, upon the completion of
20 said sale, to execute and deliver to the purchaser or purchasers deed or deeds of conveyance, conveying all of the mortgaged property aforesaid, subject to the lien of said mortgage.

Third. That, as your petitioner is informed and believes, the property subject to said mortgage is worth an amount largely in excess of the total principal and interest due upon said bonds.

That the Debtor is unable to pay the principal amount due upon said bonds, but has funds sufficient to pay the last interest coupon due thereon, maturing May 1, 1933.

That, if said mortgaged railroad and other property shall be sold by the Trustees, as provided in said mortgage they may do, the railroad system of the Debtor would be irrevocably injured in having that portion of its system, covered by said mortgage, dismembered and conveyed, with the result that a large part of the security for the payment of the Debtor's First and Refunding Mortgage Bonds, to meet senior liens upon said property, would be lost to the holders thereof.

Wherefore, the Debtor represents to the Court that, in order to prevent a sacrifice of said mortgaged railroad and other property of the Debtor Railroad Company and the loss of its equity in said property and the loss thereof to its creditors, your petitioner believes that it should be authorized to pay, out of the funds coming into its hands said amount of $690,960.00, interest upon said River & Gulf Division
21 First Mortgage Bonds of the Debtor, which will be due and payable on May 1, 1933, as hereinbefore stated.

MISSOURI PACIFIC RAILROAD COMPANY,
By L. W. Baldwin, President.

Paul J. Bickel,
Thos. T. Railey,
Edw. J. White,
Attorneys for Debtor,
13th and Olive Sts.,
St. Louis, Mo.

United States of America,
Eastern Judicial District of Missouri,
City of St. Louis, Missouri—ss.

L. W. Baldwin, being duly sworn, on his oath states that he is the President of the Missouri Pacific Railroad Company, that he has read the foregoing petition and that the facts therein set forth are true, as affiant verily believes.

L. W. BALDWIN.

Subscribed and Sworn to before me this 1st day of May, 1933.

My commission expires June 27th, 1933.

(Seal) GEO. W. COLLINS,
Notary Public.

Filed May 4, 1933. Jas. J. O'Connor, Clerk.

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24 Order Authorizing Payment of Interest, Due May 1, 1933, on the Debtor's River & Gulf Division First Mortgage Bonds, Said Interest Payment Aggregating the Sum of $690,960.00.

Upon reading and considering the petition of the Debtor herein, regarding the $690,960.00, interest, due May 1, 1933, on $34,548,000.00, face value, of the River & Gulf Division First Mortgage Bonds of the Debtor:

It Is Ordered by the Court that the Debtor be, and
25 it is hereby, authorized and instructed to pay, out of funds coming into its hands, the interest falling due, as aforesaid, on May 1, 1933, in the sum of $690.960.00.

C. B. FARIS,
United States District Judge.

Dated this 3rd day of May, 1933.

Filed May 4, 1933. Jas. J. O'Connor, Clerk.

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28 Order Concerning Filing of Claims of Creditors.

Upon due consideration of the oral motion of Missouri Pacific Railroad Company and all the other Debtors herein, appearing by their counsel, that the Court enter an order determining a reasonable time within which claims and interests of certain classes of creditors of the Debtors, respectively, may be filed or evidenced, and after which no such claims or interest may participate in any plan of re-

organization except upon order for cause shown, and determining the manner in which such claims and interests
29 may be filed or evidenced, and it appearing that said motion should be granted, it is Ordered:

(1) That the following classes of claims described in subdivisions (a) to (d), inclusive, of this paragraph are excluded from the scope of this order and will hereafter be provided for by other appropriate orders, to-wit:

(a) Claims evidenced by bonds, funded obligations, or equipment trust certificates, issued under or secured by deeds of trust, trust indentures, mortgages, equipment trust agreements, or pledges of collateral, including any claims of the respective Trustees thereunder.

(b) Claims of Reconstruction Finance Corporation and of The Railroad Credit Corporation for money borrowed.

(c) Claims on behalf of other carriers or private car owners arising out of rate divisions, interline settlements, per diem accounts, bills for car rentals or mileage made by private cars, car repair bills, switching reclaims, apportionment of reparation awards and of freight earned respecting shipments with transit and storage privileges, and other adjustments of like character between carriers in the conduct of their joint business.

(d) Claims pending before Special Master George C. Hitchcock in the former Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company receivership proceedings.

(2) That the provisions of this order, except as hereinabove otherwise specified, shall apply to: (a) all claims against the Missouri Pacific Railroad Company, New Orleans, Texas & Mexico Railway Company, and Inter-
30 national-Great Northern Railroad Company, Debtors, or their property, accruing prior to April 1, 1933; and to (b) all claims against Missouri Pacific Railroad Corporation in Nebraska; The Beaumont, Sour Lake & Western Railway Company; The St. Louis, Brownsville and Mexico Railway Company; San Antonio, Uvalde & Gulf Railroad Company, and Houston North Shore Railway Company, Debtors, or their property, accruing prior to May 2, 1933, including, without derogation from the generality hereof, claims for personal injuries or death, damage to property, freight claims, overcharge claims, reparation awards, workmen's compensation claims, contingent claims, and other claims of all kinds whatsoever, and whether based on con-

tract, tort, penalties, statutes, or otherwise, and whether liquidated or unliquidated, and whether in suit or reduced to judgment, or otherwise, and also claims heretofore or hereafter arising out of the disaffirmance by any Debtor of any contract. Interest shall be figured and allowed to the respective dates above specified applicable to the respective Debtors, without prejudice to claim for allowance or readjustment of interest subsequent thereto.

(3) That claims against any of the Debtors may be filed with A. T. Cole, Assistant Secretary of Missouri Pacific Railroad Company, Debtor, thirteenth floor, Missouri Pacific Building, Thirteenth and Olive streets, in the City of St. Louis, Missouri, who is hereby directed immediately to stamp the date of receipt thereon and thereafter, upon appointment of a Special Master herein, to transmit the original claims to him. Each claim so filed with him must be accompanied by a copy thereof for use of the Debtor
31 and must be filed not later than August 31, 1933, except that claims arising out of the Debtor's disaffirmance of a contract after July 31, 1933, may be filed within thirty days after notice of such disaffirmance is given. Each claim shall set forth the name of the Debtor against which the claim is asserted, the name and address of the claimant, the nature of the claim, dates of accrual and the amounts of the various items, with such details as shall definitely advise the Debtor of the particulars thereof, and distinguish the claim from other claims of like nature, and shall state whether suit is pending on such claim, and if so, the name of the court in which pending, also whether judgment has been recovered thereon, and shall describe any security for such claim, partial payments, offsets or counterclaims due the Debtor, and if any lien, priority, or preferential classification is claimed, the facts respecting same shall be fully stated. The Master hereafter to be appointed may, in his discretion, in any instance require any such claims to be made more specific or to be accompanied by bill of particulars. Claims shall be verified by persons having knowledge of the facts.

(4) That claims now or hereafter pending in any court or tribunal of competent jurisdiction shall be filed in this proceeding as required by subdivision (3) of this order and within the time therein designated, but except as otherwise herein provided, may be liquidated in the jurisdiction where pending, subject to right of removal or appeal and subject to any stay orders entered in this proceeding.

The following suits now pending or hereafter filed in
32 other jurisdictions are without further order hereby stayed:

(a) Suits begun in other courts subsequent to the time fixed by this order for the filing of claims herein, on claims not timely filed in this proceeding.

(b) Suits, not yet reduced to judgment, pending or hereafter filed in courts respecting whose orders or judgments the giving of an appeal bond is a mandatory or jurisdictional prerequisite to an appeal or review.

(5) That objections by the respective Debtors, or other persons having an interest therein, to the allowance of any claims shall be filed within such time and with such particularity as the Master in his discretion may prescribe.

(6) That hearings on claims against such of the Debtors as are operating lines in the State of Texas shall be held at Houston, Texas, and on claims against the other Debtors shall be held at St. Louis, Missouri, unless otherwise agreed to by the parties or ordered by the Court or by the Master in the interest of economy and justice.

(7) That the period herein provided for the filing of claims to which this order is applicable is hereby determined to be a reasonable time for such purpose, and any such claims not filed within the time fixed by this order shall not participate in any plan of reorganization except upon further order of this Court for cause shown.

(8) That a copy of this order shall be promptly published by the Debtors, once during each week for two
33 consecutive weeks, in some publication in which bankruptcy notices are customarily published, in the cities of St. Louis and Kansas City, Missouri; Omaha, Nebraska; Little Rock, Arkansas; New Orleans, Louisiana, and Houston, Dallas and San Antonio, Texas. The Debtors shall also mail one copy of this order to at least one newspaper, if any, published in each county seat through which the lines of the Debtors are operated. Copy of this notice shall likewise be sent or given to the plaintiff or attorney of record in each of the suits now pending against any of the Debtors in other courts.

(9) That the Court further reserves jurisdiction to amplify, extend, limit, abrogate or otherwise modify this order, as the Court may deem proper. Nothing herein contained

shall prevent the Debtors from continuing to adjust or liquidate claims pursuant to authority granted by the Court.

C. B. FARIS,
District Judge.

Dated May 13th, 1933.

Filed May 15, 1933. Jas. J. O'Connor, Clerk.

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36 (Motion of Reconstruction Finance Corporation for Appointment of Trustees.)

To the Honorable, the Judges of the District Court of the United States for the Eastern Division, Eastern Judicial District of Missouri:

Comes now the Reconstruction Finance Corporation, a corporation, and moves the Court for the appointment of a Trustee or Trustees, and as grounds for said motion represents:

I.

(1) That it is a corporation organized and existing pursuant to Acts of Congress (Title 15, U. S. C. A., Chapter XIV.).

37 (2) That on the following dates your petitioner loaned Debtor, and the Debtor duly executed promissory notes in amounts as follows: (a) March 31, 1932, $2,950,000.00 (b) April 8, 1932, $805,000.00 (c) April 29, 1932, $3,195,000.00 (d) October 1, 1932, $10,150,000.00 (e) February 1, 1933, $3,000,000.00 (f) March 1, 1933, $3,034,800.00, that all of said loans were secured by collateral, that all of said notes are all in default both as to principal and interest; all of said notes bear interest at the rate of six per centum (6%) per annum.

(3) That the amount due your Petitioner by reason of said loans is $23,134,800.00 with interest to date; that by reason of the aforesaid your Petitioner is a creditor of the Debtor.

(4) Your Petitioner states to this Honorable Court upon information and belief that during 1929 and 1930, Messrs. O. P. and M. J. Van Sweringen acquired, through their various companies and particularly Alleghany Corporation, shares of stock of Debtor, that on December 21, 1929, said O. P. and M. J. Van Sweringen, through Alleghany Corporation, owned approximately 482,000 shares of the common and 192,300 shares of the Preferred Stock; that said stock

holdings were from time to time increased, and on April 30, 1930, the Van Sweringen interests, through Alleghany Corporation, owned approximately 547,800 shares of the Common, and 233,500 shares of the Preferred stock of Debtor, and that by reason of said stock ownership and control the said Van Sweringen interests were able to and did elect the Board of Directors and control and manage the affairs of the Debtor through their nominee, Alleghany Corporation.

38 Your petitioner shows to the Court that subsequently O. P. Van Sweringen was elected Chairman of the Board of Directors of Debtor and is now Chairman of the Board of Directors, and since acquiring control, as aforesaid, has been actively engaged in the management, has dominated control and directed the policies of Debtor, and its properties.

(5) That Alleghany Corporation is a Maryland corporation, that its charter was issued early in 1929, that among the first Board of Directors was John P. Murphy and Henry A. Marting (referred to hereinafter); subsequently, at a special meeting of the Board of Directors of said Alleghany Corporation, O. P. Van Sweringen was elected President and M. J. Van Sweringen was elected Vice-President, and John P. Murphy was elected Secretary. Your petitioner alleges, on information and belief, that said persons retained their respective offices throughout the year of 1929 and subsequent years.

(6) Your petitioner shows that in the fall of 1929, shortly before the stock market decline, and on or about the 16th day of October, Alleghany Corporation, through its nominee, Geneva Corporation, purchased certain properties situated in North Kansas City, Missouri, and St. Joseph, Missouri; that said properties so acquired are listed in Exhibits "A", "B", "C", and "D" referred to in Paragraph 7 hereof.

Your petitioner states, on information and belief, that the properties were obtained in substantially the following manner, and that the items of purchase were carried on the books of Alleghany Corporation as follows, to-wit: contract
39 of purchase between Geneva Corporation, nominee of Alleghany Corporation and Swift Family Realty Trust and Armour Company of Delaware, jointly, stated aggregate consideration for the North Kansas City properties to be $13,000,000.00, of which amount $5,200,000.00 was recorded as having been paid on November 1, 1929; the balance of $7,800,000.00 to be due October 16, 1930. That said

contract of purchase between Union Terminal Trust and Union Terminal Railway Company, and Geneva Corporation, acting as nominee of Alleghany Corporation, stated the aggregate consideration for the St. Joseph, Missouri, properties to be $4,600,000.00, of which consideration $2,300,000.00 was recorded as having been paid on December 31, 1929, the balance of $2,300,000.00 to be due on October 16, 1930. Your petitioner states that it is not advised as to either the manner or method, except as contained in Exhibit "C", attached hereto, which states the consideration to be $1,579,514.00, employed by Alleghany Corporation in acquiring the outstanding capital stock of the St. Joseph Belt Railway, aforesaid, but states upon information and belief that it was acquired in substantially the same manner as the other properties referred to herein.

Your petitioner states that it has no information whether or not the purchase price set out in the contracts is the actual consideration passing between the parties for said properties, but states, on information and belief that the amounts set forth in said contracts were greatly in excess of the actual consideration and greatly in excess of the reasonable market value of said properties at that time.

(7) Your Petitioner shows the Court that subsequent to the transactions aforesaid, Alleghany Corporation, through its executive officers, Messrs. O. P. and M. J. Van Sweringen, having obtained control of the debtor property and, incidentally, control of the directorate of debtor, decided that the properties aforesaid, acquired and held by Alleghany Corporation, which corporation was at that time the owner of and/or in control of Debtor, should be sold to and purchased by Debtor from Alleghany Corporation. To accomplish this end, Alleghany Corporation, through its executive officers, Messrs. Van Sweringen, organized another corporation under the laws of the State of Delaware, known as Terminal Shares, Inc.; that all the shares of stock issued by Terminal Shares, Inc., are owned by Alleghany Corporation of which O. P. Van Sweringen is President and Chairman of the Board of Directors; that said O. P. Van Sweringen is the same O. P. Van Sweringen who is Chairman of the Board of Directors of Debtor; that H. A. Marting was President of said Terminal Shares, Inc., and John P. Murphy was Secretary. Petitioner states that said H. A. Marting is the same person as Henry A. Marting whose name appears as a member of the first Board of Direc-

tors of Alleghany Corporation. Petitioner states that the names of Henry A. Marting and John P. Murphy frequently appear in connection with those of Messrs. O. P. and M. J. Van Sweringen in the transactions related herein.

(8) Petitioner states that the sale of the aforesaid properties for a total consideration of $20,334,262.00 plus interest at 5½ per cent per annum, having been agreed upon between Alleghany Corporation, of which O. P. Van Sweringen was Chairman of the Executive Committee of the Board
41 of Directors and the Missouri Pacific Railroad (Debtor herein) of which O. P. Van Sweringen was Chairman of the Executive Committee of the Board of Directors, title passed into Terminal Shares, Inc.; and on December 31, 1930, a series of contracts (a general agreement and three specific purchase contracts) were entered into between Terminal Shares, Inc., and Missouri Pacific Railroad (Debtor herein). Petitioner states that said contracts were executed on behalf of Terminal Shares, Inc., by H. A. Marting, as President, and John P. Murphy, as Secretary; that L. W. Baldwin and Wm. Wyer, as President and Secretary, respectively, executed the contracts on behalf of Missouri Pacific Railroad. Petitioner states that both the Buyer (Missouri Pacific Railroad) and Seller (Terminal Shares, Inc.,) were owned and/or controlled by Alleghany Corporation through its executive officers, Messrs. O. P. and M. J. Van Sweringen. These contracts by and between Terminal Shares, Inc., and Debtor are attached hereto and made a part hereof by reference, as Exhibits "A", "B", "C" and "D" and here by reference incorporated herein, as if set out herein in words and figures.

(9) This petitioner states that, on information it now has it is not able to say whether the contracts referred to herein should be repudiated or ratified; that it is an open question whether said contracts should be repudiated or ratified and that the decision is one which should be made by the Trustee or Trustees herein requested. That there should be a Trustee or Trustees appointed, who are wholly disinterested, to investigate the prudency of said contracts and report
42 to this Honorable Court and creditors, of which your petitioner is one, on all matters and things pertaining thereunto. Petitioner states that as a creditor it is entitled to have this transaction thoroughly investigated by persons who have not heretofore been parties to the transaction, and that a Trustee or Trustees are the only persons who can fairly perform this service for creditors, of which your petitioner is one.

II.

For second grounds for the appointment of a Trustee or Trustees, your Petitioner states that it is provided in subdivision (d), Chapter VIII of the amendment to the United States Bankruptcy Laws, Sec. 77, as follows:

"(d) Before creditors and stockholders of the debtor are asked finally to accept any plan of reorganization, the Interstate Commerce Commission shall, after due notice, hold a public hearing at which the debtor shall present its plan of reorganization and at which also, such a plan may be presented by the Trustee or Trustees, or by or on behalf of creditors of the debtor, being not less than 10 per centum in amount of any class of creditors. * * *"

Petitioner states that this Honorable Court ought to appoint a Trustee or Trustees of the Debtor estate to the end that creditors may, if they see fit to do so, present through the Trustee or Trustees, their plan or plans of reorganization, which will take into and give adequate consideration to all classes of creditors.

Wherefore, Petitioner prays this Honorable Court to
43 appoint a Trustee or Trustees of said Debtor, as provided for by Section 77, Chapter VIII of the Acts of Congress amending the U. S. Bankruptcy Law.

MAX O'RELL TRUITT,
Counsel Reconstruction Finance Corporation.

Received copy of above petition this 22 day of May, 1933.

MISSOURI PACIFIC RAILROAD CO.,
By Edw. J. White,
V. P. & G. S.

Filed May 22, 1933. Jas. J. O'Connor, Clerk.

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44 (Petition of Guaranty Trust Company, et al., for leave to Intervene.)

To the Honorable the Judges of the District Court of the United States for the Eastern Division, Eastern Judicial District of Missouri:

The petition of Guaranty Trust Company of New York and Benjamin F. Edwards, as Trustees under the First and Re-

funding Mortgage of Missouri Pacific Railroad Company, dated April 2, 1917, respectfully shows as follows:

1. The petitioner, Guaranty Trust Company of New York (hereinafter sometimes called the "Corporate Trustee"), is, and at all of the times wherein it is hereinafter mentioned was, a corporation duly organized and existing under the laws of the State of New York, and a citizen of said State, and a resident and inhabitant of the City, County and
45 State of New York, and of the Southern District of New York, and as such corporation is, and at all of the times wherein it is hereinafter mentioned was, duly authorized and empowered to hold in trust the property conveyed, transferred and assigned to it upon the trusts hereinafter stated, and to execute and perform the trusts reposed in it under and by virtue of the mortgage or deed of trust and supplements thereto hereinafter described and collectively called the First and Refunding Mortgage.

2. The petitioner, Benjamin F. Edwards, is, and at all of the times wherein he is hereinafter mentioned was, a citizen of the State of Missouri, and a resident and inhabitant of the City and County of St. Louis, State of Missouri, and of the Eastern District of Missouri.

3. The debtor, Missouri Pacific Railroad Company (hereinafter called the "Railroad Company"), is a corporation duly organized and existing under the laws of the State of Missouri, and a citizen and resident of said State, and owns or leases and, prior to the filing of its petition in this Court under Section 77 of Chapter VIII of the Acts of Congress relating to Bankruptcy, as hereinafter shown, operated lines of railroad continuous and connecting and forming a complete railroad system lying within the States of Missouri, Kansas, Colorado, Oklahoma, Arkansas, Louisiana, Nebraska, Tennessee and Illinois, a substantial and material part whereof is within the Eastern District of Missouri, Eastern Division, and its principal operating and general offices
46 are in the City of St. Louis, Missouri, within the Eastern District of Missouri, Eastern Division.

4. On or about May 18, 1917, the Railroad Company, desiring to provide for funding and consolidating the indebtedness secured by mortgages, trusts and liens on certain of the railroads, equipment and property of the Railroad Company and to provide for making additions to, and extensions and betterments of, its railroads and other property and for the purchase of additional equipment and property and, for such and other corporate purposes, to borrow money, in pursuance

of resolutions of its Board of Directors adopted by the affirmative vote of more than two-thirds of the entire Board, and of resolutions of the holders of its entire capital stock outstanding, at meetings duly called and held in accordance with law, and with the by-laws of the Railroad Company, determined to increase its bonded indebtedness by the creation and issue of its bonds, limited, except as otherwise provided in the First and Refunding Mortgage, to an aggregate principal amount at any one time outstanding of Four hundred and fifty million dollars ($450,000,000), to be known as its First and Refunding Mortgage Bonds (hereinafter sometimes called the "First and Refunding Bonds"); such bonds to be issued in series, to bear such date or dates and have such maturity or maturities, to bear interest at such rate or rates not exceeding six per cent. per annum, payable semi-annually or quarterly on such date or dates, as might from time to time be fixed by the Board of Directors and expressed in the bonds respectively; and to be secured by a mortgage or deed of trust on the lines of railroad, property and franchises therein described or embraced thereunder; and in order
47 to secure the payment of the principal and interest of all the First and Refunding Bonds at any time issued and outstanding under the First and Refunding Mortgage according to their tenor and effect and to secure the performance and observance of all the covenants and conditions therein and in the First and Refunding Mortgage contained, and to declare the terms and conditions upon which the First and Refunding Bonds were to be issued and secured thereunder, duly made, and on or about May 18, 1917, executed under its corporate seal and delivered to the petitioners, as Trustees, a mortgage or deed of trust, dated April 2, 1917, and known as its First and Refunding Mortgage, a copy of which is hereto annexed, marked Schedule A and made a part hereof, wherein and whereby the Railroad Company granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred, pledged and set over, subject to the priority of lien of the several mortgages upon separate portions of its lines of railway and other property in the First and Refunding Mortgage mentioned, unto Guaranty Trust Company of New York and Benjamin F. Edwards, as Trustees, and unto their successors in the trust and their assigns forever, all and singular the premises, railroads, properties, real or personal, rights, franchises, estates, appurtenances, stocks and bonds described in the granting clauses of the First and Refunding Mortgage, as follows (the Railroad Company therein referred to is the debtor, and the Indenture therein mentioned is the First and Refunding Mortgage and the bonds therein referred to are the First and Refunding Bonds) viz.:

[Description of property covered by the Mortgage not here printed.]

48 5. All the above described premises, railroads, properties, real or personal, rights, franchises, estates, appurtenances, stocks and bonds were in and by the First and Refunding Mortgage granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred, pledged and set over unto the petitioners, Guaranty Trust Company of New York and Benjamin F. Edwards, as Trustees, to have and to hold the same unto them, their successor or successors and assigns forever, in trust, for the equal and proportionate benefit and security of all present and future holders of the First and Refunding Bonds and interest obligations issued and to be issued under the First and Refunding Mortgage, and for the enforcement of the payment of the First and Refunding Bonds and obligations when payable, and the performance of and compliance with the covenants and conditions of the First and Refunding Mortgage, without preference, priority or distinction as to lien, or otherwise, of any one bond over any other bond by reason of priority in the issue or negotiation thereof, or otherwise, so that each and every bond secured by the First and Refunding Mortgage should have the same right, lien and privilege thereunder, and, subject to the terms thereof, be equally and proportionately secured thereby, as if all had been made, executed, delivered and negotiated simultaneously with the execution and delivery of the First and Refunding Mortgage, it being intended that the lien and security of the First and Refunding Mortgage should take effect from the day of the execution and delivery thereof, without regard to the time of such actual issue, sale or disposition of First and Refunding Mortgage Bonds, and as though upon said date all of
49 the First and Refunding Mortgage Bonds had been actually issued, sold and delivered to and were in the hands of innocent holders thereof for value.

6. In and by the granting clauses of the First and Refunding Mortgage there were granted, bargained, sold, conveyed and confirmed unto the petitioners as Trustees, among other things, the "tolls, income, rents, revenues, issues and profits" of the mortgaged property.

7. The petitioners, Guaranty Trust Company of New York and Benjamin F. Edwards, duly accepted the trusts created by the First and Refunding Mortgage and united in the execution of the same to evidence such acceptance.

8. The Petitioners are informed and believe and therefore allege that since the date of the execution and delivery

of the First and Refunding Mortgage, the Railroad Company has from time to time acquired certain other property, real and personal, rights and interests (the exact character, description and extent of which are at present unknown to the petitioners), which has become subject to the lien of the First and Refunding Mortgage, and among which property, rights and interests are certain bonds, notes, stocks and other securities specifically set forth and described in Schedule B attached hereto and made a part hereof with the same force and effect as if herein set forth at length, and also the property specifically conveyed to your petitioners, as Trustees, by several supplemental indentures, which said supplemental indentures and property are described in Schedule C (1 to 20 inclusive) hereto attached and made a part hereof with
50 the same force and effect as if herein set forth at length, and that for the proper protection and enforcement of the rights of the Trustees and of the holders of First and Refunding Mortgage bonds and interest obligations, it is necessary for the Railroad Company to account to petitioners in this proceeding for all property, rights and interests owned by the Railroad Company at the date of the execution and delivery of the First and Refunding Mortgage, and for all property, rights and interests subsequently acquired by the Railroad Company, and for certain property released from the lien of said mortgage, and to exhibit in this proceeding a full and true description thereof, in order that the said property, rights and interests or so much thereof as is subject to the lien of the First and Refunding Mortgage, may be so declared and decreed by this Honorable Court.

9. The petitioners are informed and believe and therefore allege that subsequent to the execution and delivery of the First and Refunding Mortgage, the same was duly recorded in each county in which the lines of railroad and other property of the Railroad Company covered by the First and Refunding Mortgage were and are situated or located, and elsewhere as required by law, and that the said supplements to the First and Refunding Mortgage likewise were duly recorded respectively in the counties in which the property covered by each of said supplements were and are situated or located.

10. The First and Refunding Mortgage and the said supplements thereto were and are the proper act and deed of the Railroad Company, and were by it authorized, made
51 and delivered in all respects in conformity with law, and the same were and are valid conveyances for the purposes therein stated and now constitute valid and subsisting liens upon all the property therein mentioned and set

forth and covered by or embraced in or under the First and Refunding Mortgage and supplements thereto, or intended so to be, or which has become subject to the lien of the First and Refunding Mortgage and supplements thereto, and the petitioners are advised and charge that the lien of the First and Refunding Mortgage covers and extends to all of the premises and properties mentioned and described in said supplemental indentures (Schedule C 1-20), or thereby conveyed and transferred, or intended so to be.

11. By Article Two of the First and Refunding Mortgage it is, among other things, provided that the First and Refunding Mortgage Bonds should be executed by the Railroad Company and delivered by it for authentication to the Corporate Trustee, and that thereupon, as provided therein, the Corporate Trustee should authenticate and deliver the same. From time to time the petitioner Guaranty Trust Company of New York, the Corporate Trustee, in conformity with the provisions of the First and Refunding Mortgage has duly authenticated Thirty-Five Million Four Hundred and Fifty-Seven Thousand Dollars ($35,457,000) principal amount of Series A 5% First and Refunding Bonds, Thirteen Million Six Hundred Forty-One Thousand Dollars ($13,641,000) principal amount of Series B 5% First and Refunding Bonds, Nine Million Forty-Four Thousand Dollars ($9,044,000) principal amount of Series C 5% First and Refunding
52 Bonds, Sixty Million Three Hundred Seventy Three Thousand Five Hundred Dollars ($60,373,500) principal amount of Series D 6% First and Refunding Bonds, Thirty Million Seven Hundred One Thousand Five Hundred Dollars ($30,701,500) principal amount of Series E 6% First and Refunding Bonds, One Hundred Fifteen Million One Hundred Twenty One Thousand ($115,121,000) principal amount of Series F 5% First and Refunding Bonds, Forty Four Million Two Hundred Fifty Thousand Dollars ($44,250,000) principal amount of Series G 5% First and Refunding Bonds, Twenty Five Million Dollars ($25,000,000) principal amount of Series H 5% First and Refunding Bonds and One Hundred One Million Two Hundred Thousand Dollars ($101,200,000) principal amount of Series I 5% First and Refunding Bonds, all of which Bonds had been theretofore duly executed by the Railroad Company pursuant to authority of law and due corporate action, and thereupon each and all of said Bonds were duly delivered to the Railroad Company or upon its order pursuant to the terms of said mortgage.

Seventeen Million Six Hundred Sixteen Thousand Five Hundred Dollars ($17,616,500) principal amount of Series A

5% First and Refunding Bonds, Thirteen Million Six Hundred Forty One Thousand Dollars ($13,641,000) principal amount of Series B 5% First and Refunding Bonds, Nine Million Forty Thousand Dollars ($9,040,000) principal amount of Series C 5% First and Refunding Bonds, Sixty Million Three Hundred Seventy Two Thousand Five Hundred Dollars ($60,372,500) principal amount of Series D 6% First and Refunding Bonds and Thirty Million Seven Hundred One Thousand Five Hundred Dollars ($30,701,500) prin-
53 cipal amount of Series E 6% First and Refunding Bonds, Twenty Million One Hundred Twenty One Thousand Dollars ($20,121,000) principal amount of Series F 5% First and Refunding Bonds and Nineteen Million Two Hundred Fifty Thousand Dollars ($19,250,000) principal amount of Series G 5% First and Refunding Bonds have been cancelled in accordance with the provisions of the First and Refunding Mortgage, and as petitioners are informed and believe, Forty Million Dollars ($40,000,000) principal amount of Series I 5% First and Refunding Bonds, a part of the One Hundred One Million Two Hundred Thousand Dollars ($101,200,000) referred to heretofore, in the aggregate are pledged to secure advances from the Reconstruction Finance Corporation and others.

Your petitioners are informed and believe and therefore allege that the balance of all the First and Refunding Bonds which have been issued and which have not heretofore been cancelled is $264,045,500. principal amount, consisting of Bonds of the following Series:

$ 17,840,500.	principal	amount	of	Series	A 5%	First	and	Refunding	Bonds
4,000.	"	"	"	"	C 5%	"	"	"	"
1,000.	"	"	"	"	D 6%	"	"	"	"
95,000,000.	"	"	"	"	F 5%	"	"	"	"
25,000,000	"	"	"	"	G 5%	"	"	"	"
25,000,000	"	"	"	"	H 5%	"	"	"	"
101,200,000	"	"	"	"	I 5%	"	"	"	"

all of which Bonds are lawfully created, valid and existing obligations of the Railroad Company and entitled to the lien and security of the First and Refunding Mortgage, and with the exception of Forty Million Dollars ($40,000,000)
54 principal amount of Series I 5% First and Refunding Bonds pledged to secure advances from the Reconstruction Finance Corporation and others as aforesaid, are in the hands of numerous bona fide holders for value.

12. The First and Refunding Mortgage of the Railroad Company (Schedule A hereto annexed), in and by Article Eight thereof, provides, among other things, as follows (the

Railroad Company therein referred to is the Missouri Pacific Railroad Company and the debtor herein; the Indenture therein referred to is the First and Refunding Mortgage; the bonds and interest obligations therein referred to are the First and Refunding Bonds and coupons respectively; and the Trustees therein referred to are the Trustees under the First and Refunding Mortgage and the petitioners herein):

Section 2. If one or more of the following events herein called the events of default, shall happen, that is to say:

(a) In case default shall be made in the payment of any installment of interest on any of the bonds hereby secured when and as the same shall become payable, as therein and herein expressed, and such default shall continue for a period of three months; or

(b) In case default shall be made in the payment of the principal of any of the bonds hereby secured when and as the same shall become due and payable either by the terms thereof or otherwise as herein provided; or

(c) In case default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Railroad Company in the bonds hereby secured or in this indenture or any indenture supplemental hereto contained, and such default shall continue for a period of three months after written notice specifying such default and requiring the same to be remedied shall have been given to the Railroad Company by the Corporate Trustee, which notice may be given by the Corporate Trustee in its discretion and shall be given on the written request of the holders of five per cent. in amount of the bonds hereby secured at the time outstanding; or

(d) In case an order shall be made for the appointment of a receiver of the Railroad Company or of the trust estate or of any part thereof; or

(e) In case default shall be made in the payment of the interest on any bond or obligation (except bonds of the four issues last described in Article Twelfth of the granting clauses hereof) outstanding and secured by any lien prior to that of this indenture on the trust estate, or any part thereof, or upon property a leasehold interest in which shall be subject to the lien of this indenture, or in case default shall be made in the payment of the interest on any outstanding bond or obligation of or secured by lien upon the property of any company of which ninety per cent. or more of the capital stock shall be pledged or assigned hereunder; and any of

such defaults shall continue for thirty days; or the Railroad Company shall fail, on the maturity, whether by declaration or otherwise, of any such bonds or obligations (except as aforesaid), and on presentation thereof in accordance with
the terms thereof, either to pay said bonds or obliga-
56 tions or to cause said bonds or obligations to be taken
up and delivered to the Trustees to be held under this indenture, or, if so required by the terms of any indenture constituting a prior lien upon any part of the trust estate, to be delivered to the trustee or trustees thereunder, and in such case to be assigned to the Trustees hereunder; or default shall be made in the performance of any covenant contained in any mortgage or deed or other instrument of trust securing any such bond or obligation, or constituting a lien on any part of the trust estate in priority to this indenture or upon property a leasehold interest in which shall be subject to the lien of this indenture; and, by reason of any of such defaults, any right of entry or right of action for the enforcement of the security afforded thereby shall accrue; * * *

then, and in each and every such case, in the discretion of the Corporate Trustee, the Trustees, or either of them, personally or by their agents or attorneys, may enter into and upon all or any part of the railroads, property and premises, lands, rights, interests and franchises hereby conveyed, and each and every part thereof, and may exclude the Railroad Company, its agents and servants, wholly therefrom, and having and holding the same may use, operate, manage and control said railroads and other premises, regulate the tolls for the transportation of passengers and freight thereon, and conduct the business thereof, either personally or by their superintendents, managers, receivers, agents and servants or attorneys, to the best advantage of the holders of the bonds hereby secured; and upon every such entry the Trustees, at the expense of the trust estate, from time to
57 time, either by purchase, repair or construction may
maintain and restore, and may insure and keep insured, the property, buildings, bridges and structures erected or provided for use in connection with said railroads and other premises, and whereof they shall become possessed as aforesaid, in the same manner and to the same extent as is usual with railroad companies, and likewise from time to time, at the expense of the trust estate, may make all necessary or proper repairs, renewals and replacements, and useful alterations, additions, betterments and improvements thereto and thereon, as to them may seem judicious; and, in such case, the Trustees shall have the right to manage the trust estate and to carry on the business and

exercise all rights and powers of the Railroad Company, either in the name of the Railroad Company or otherwise, as the Trustees shall deem best; and they shall be entitled to collect and to receive all tolls, earnings, income, rents, issues and profits of the same and every part thereof; and after deducting the expenses of operating said railroads and other premises, and of conducting the business thereof, and of all repairs, maintenance, renewals, replacements, alterations, additions, betterments and improvements, and all payments which may be made for taxes, assessments, insurance and prior or other proper charges upon the said premises and property or any part thereof, as well as just and reasonable compensation for their services, and for all attorneys, counsel, agents, clerks, servants and other employees by them properly engaged and employed, they shall apply the moneys arising as aforesaid as follows:

(1) In case the principal of none of the bonds hereby secured shall have become due and be unpaid, to the
58 payment of the interest in default, in the order of the maturity of the installments of such interest, with interest thereon at the same rates as are borne by the bonds respectively upon which such interest shall be in default; such payments to be made ratably to the persons entitled thereto, without discrimination or preference; and

(2) In case the principal of any of the bonds hereby secured shall have become due, by declaration or otherwise, and shall be unpaid, first to the payment of the accrued interest (with interest on the overdue installments thereof at the same rates as are borne by the bonds respectively upon which such interest shall be in default) in the order of the maturity of the installments of such interest, and then to the payment of the principal of all bonds hereby secured, whether due or not; such payments to be made ratably to the persons entitled thereto, without discrimination or preference.

These provisions, however, are not intended in any wise to modify the provisions of Section 1 of this Article Eight, but are subject thereto.

* * * * * * * *

Section 5. If one or more of the events of default described in Section 2 of this Article Eight shall happen, and shall be continuing, the Trustees, with or without entry, personally or by attorney, in the discretion of the Corporate Trustee, either

(a) may sell, subject to the then existing prior liens thereon, to the highest bidder, all and singular the trust estate, including bonds and stocks, rights, franchises
59 and interests and appurtenances, and other real and personal property of every kind, and all right, title and interest, claim and demand therein, and right of redemption thereof; which sale or sales shall be made at public auction at such place in the City of St. Louis, in the State of Missouri, or at such other place, and at such time and upon such terms, as the Corporate Trustee may fix and briefly specify in the notice of sale to be given as herein provided; or

(b) may proceed to protect and enforce their rights and the rights of the holders of the bonds secured by this indenture, by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or for the foreclosure of this indenture, or for the enforcement of any other appropriate legal or equitable remedy, as the Corporate Trustee, being advised by counsel, shall deem most effectual to protect and enforce any of their rights or duties hereunder.

Upon the written request of the holders of twenty-five per cent. in amount of the bonds hereby secured, in case of any default made and continued as aforesaid, it shall be the duty of the Trustees, upon being indemnified as hereinafter provided, to take all steps needful for the protection and enforcement of their rights and the rights of the holders of the bonds hereby secured, and to exercise the powers of entry or sale herein conferred, or both, or to take appropriate judicial proceedings by action, suit or otherwise, as the Corporate Trustee, being advised by counsel, shall deem
60 most expedient in the interest of the holders of the bonds hereby secured.

In case default shall be made in the payment of the principal or interest of some, but not all, of the bonds outstanding hereunder, then whatever action it is in this Article Eight provided may or shall be taken by or upon the request of the holders of a specified percentage of bonds outstanding, may or shall also be taken by or upon request of the holders of the same percentage of the outstanding bonds of all series upon bonds of which any such default shall have occurred.

* * * * * * * *

Section 17. In case an event of default shall have happened and a bill of equity shall be filed or any other judicial

proceedings commenced to enforce any right of the Trustees or of the bondholders under this indenture, then the Trustees shall be entitled to exercise the right of entry herein conferred, and also any and all other rights and powers herein conferred and provided to be exercised by the Trustees upon the occurrence and continuance of default as hereinbefore provided, and as matter of right the Trustees shall be entitled to the appointment of a receiver of the trust estate and of the earnings, income, revenue, rents, issues or profits thereof, with such powers as the court making such appointment shall confer; provided, however, that notwithstanding the appointment of any such receiver, the Corporate Trustee shall be entitled to retain possession and control of any bonds, cash and other property deposited with the Corporate Trustee hereunder.

Section 18. In case the Railroad Company shall make default in any of the respects mentioned in Section 2 of this Article Eight, and (1) at any time during the continu-
61 ance of such default there shall be any existing judgment against the Railroad Company unsatisfied and unsecured by bond on appeal or (2) in any judicial proceeding by any party other than the Trustees, a receiver shall be appointed of the Railroad Company or of its property, or a judgment or order be entered for the sequestration of its property; or if, in case of default in payment of interest specified in subdivisions (a) and (c) of said Section 2, the Railroad Company shall admit to the Trustees its inability to make good such default within the period of grace in said subdivisions mentioned; the Trustees, without waiting the period of grace, if any, in said section specified in respect of such default, shall thereupon be entitled, in the discretion of the Corporate Trustee, forthwith to exercise the right of entry herein conferred, and also any and all other rights and powers herein conferred and provided to be exercised by the Trustees upon the occurrence and continuance of default as hereinbefore provided, and as a matter of right the Trustees shall thereupon be entitled, in the discretion of the Corporate Trustee, to the appointment of a receiver of the trust estate, and of the earnings, income, revenue, rents, issues and profits thereof, with such powers as the court making such appointment shall confer; provided, however, that notwithstanding the appointment of any such receiver, the Corporate Trustee shall be entitled to retain possession and control of any bonds, cash and other property deposited with the Corporate Trustee hereunder and to receive and hold any property or money, and to retain control of any moneys deposited with other depositaries as herein provided.

* * * * * * * *

Section 21. Except as herein expressly provided to the contrary no remedy herein conferred upon, or reserved to, the Trustees, or either of them, or the holders of bonds hereby secured, is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

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* * * * * * * *

13. Your petitioners are informed and believe and therefore allege that heretofore and on or about March 31, 1933, the Railroad Company filed in this Court its petition as debtor under Section 77 of Chapter VIII of the Acts of Congress relating to Bankruptcy, which petition represented, among other things, that the petitioner was duly organized and existing under the laws of the State of Missouri, and a common carrier by railroad engaged in the transportation of persons and property in interstate commerce, in the States of Missouri, Arkansas, Colorado, Illinois, Kansas, Louisiana and Oklahoma; that there would become due on April 1, 1933, and within thirty days thereafter, certain sums aggregating $40,589,330.78 for principal and interest on its obligations or obligations constituting a lien on its property and for taxes; that the Debtor was without funds to pay and discharge the aforesaid obligations as they matured, and alleged, on information and belief, that it had no means of borrowing or otherwise procuring such funds, and was unable to meet its debts as they matured and desired to effect a plan of reorganization pursuant to Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy; that on the date of the filing of the petition a copy thereof was being filed with the Interstate Commerce Commission, and that the filing of the petition was duly authorized by the Debtor by resolution of the Executive Committee of the Board of Directors of the Debtor, adopted at a meeting thereof duly held on the 31st day of March, 1933. The said petition prayed, among other things, that an order might be entered approving said petition as properly filed under Section 77, and that there might be granted to the Railroad Company all other and further relief to which it might be entitled.

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14. The petitioners are informed and believe and therefore allege, that upon the filing of said petition by the Railroad Company and on or about March 31, 1933, an order was made and entered by this Court, which order, among other things, directed that the petition be approved as properly

filed under Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, and authorized the Railroad Company, pending further order of this Court, among other things, to run, manage, maintain, operate and keep in proper condition and repair the railroads and property of the Railroad Company, wherever situated, whether in Missouri, or the Eighth Judicial Circuit, or elsewhere, and to manage and conduct its business as a railroad company, all according to law and subject to such supervision and control by the Court as the Court might exercise by its further orders entered herein.

15. The petitioners pray leave to refer to the said petition of the Railroad Company, and to the said order entered thereon, or to duly certified copies thereof when the same shall be produced upon the final hearing, or
64 upon any hearing in this proceeding, with the same force and effect as if the said petition and order were herein set forth at length.

16. The petitioners are informed and believe and therefore allege that the Railroad Company, subsequent to the entry of the aforesaid order by this Court, has operated its lines of railroad, properties and premises of every kind and description, including the properties subject to the lien of the First and Refunding Mortgage and the supplements thereto (other than certain securities in the possession of Guaranty Trust Company of New York, as Corporate Trustee), subject to the supervision and control of this Court pursuant to said order and the further orders entered herein and to the provisions of Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, by reason whereof the petitioners are unable, save as herein sought, to take possession thereof and to administer their trust as in the First and Refunding Mortgage it is provided should be done in the event of a default as herein specified.

17. The petitioners are informed and believe and therefore allege, that events of default under the First and Refunding Mortgage have occurred in that (a) the Railroad Company has failed, on the maturity on May 1, 1933, of the $34,548,000 principal amount of St. Louis, Iron Mountain and Southern Railway Company River and Gulf Divisions First Mortgage Four Per Cent. Thirty Year Gold Bonds secured by its First Mortgage dated May 1, 1903, constituting a lien prior to that of the First and Refunding Mortgage on a part of the property secured by such First and Refunding Mortgage, to pay the same or to cause the same to be

taken up and delivered to your petitioners, as Trus-
65 tees, or to be delivered to the trustee or trustees of any indenture constituting a prior lien, and (b) the Railroad Company has defaulted in the payment of the interest due April 1, 1933, upon all the First Mortgage 4½% Gold Bonds issued and outstanding and secured by the First Mortgage of Pacific Railroad of Missouri (Carondelet Branch), and that such default in the payment of interest has continued for a period of thirty (30) days from April 1, 1933, and such defaults still continue.

18. The petitioners are informed and believe and therefore allege that by reason of the defaults mentioned in the foregoing paragraph 17 they are entitled, under the terms of the First and Refunding Mortgage, to exercise the right of entry therein conferred and to proceed to protect and enforce their rights and the rights of the holders of the First and Refunding Bonds in the manner described in the First and Refunding Mortgage and are entitled to collect and to receive all tolls, earnings, income, rents, issues and profits of the mortgaged premises, and to apply the same as provided in the First and Refunding Mortgage, and generally to exercise any and all rights and powers in and by the First and Refunding Mortgage conferred and provided to be exercised by the Trustees, or either of them, thereunder, upon the occurrence and continuance of any default as in the First and Refunding Mortgage provided.

19. The petitioners are informed and believe and therefore allege that default has been made by the Railroad Company in the payment of the instalment of interest which became due on April 1, 1933, upon all of the Series H
66 5% First and Refunding Bonds issued and outstanding and secured by the First and Refunding Mortgage and that such default still continues.

The petitioners are informed and believe and therefore allege that default has likewise been made by the Railroad Company in the payment of the installment of interest which became due on May 1, 1933, upon all of the Series G 5% First and Refunding Bonds issued and outstanding and secured by the First and Refunding Mortgage and that such default still continues.

20. The petitioners are informed and believe and therefore allege that various mortgages exist upon the properties of the Railroad Company, including the First and Refund-

ing Mortgage as aforesaid; that the liens and provisions of the said mortgages differ among themselves and the aggregate of the outstanding bonds secured by them respectively is very great, amounting to many millions of dollars; that some of said mortgages purport, or may be claimed, to constitute liens upon the property covered by the lien of the First and Refunding Mortgage, or some portions thereof, partly superior and partly inferior to the First and Refunding Mortgage lien, but that the amount and extent of such liens, if any, is unknown to your petitioners.

21. The petitioners are informed and believe and therefore allege, that the income and revenues of the Railroad Company are and will be wholly insufficient to pay and discharge the indebtedness of the Railroad Company now due and owing by it, and that the Railroad Company has
67 insufficient resources with which to provide for the payment of its obligations as they mature.

22. The petitioners are informed and believe and therefore allege that the said railroad property, premises and franchises covered by and embraced in and under the First and Refunding Mortgage and the supplements thereto constitute one single property, consisting of a railroad and its appurtenances, and should be conducted as a single enterprise.

23. No proceedings have been had at law or in equity for the protection and enforcement of the rights of the petitioners as such Trustees, and the rights of the holders of the First and Refunding Bonds or for the foreclosure of the First and Refunding Mortgage or for the collection or enforcement of the said mortgage debt, or any part thereof, save only this proceeding, and that petitioners have no adequate relief at law, and the relief to which they are entitled can only be granted by this Court.

24. The petitioners are informed and believe and therefore allege, that the Railroad Company owns or leases and operates lines of railroad, substantially all continuous and connecting and forming a complete railroad system, lying within the States of Missouri, Kansas, Colorado, Oklahoma, Arkansas, Louisiana, Nebraska, Tennessee and Illinois, aggregating in length of first main track about 7,450.59 miles; the Railroad Company owns and leases certain rolling stock and equipment and owns other property, real and personal, as well as rights, privileges and franchises, appertaining to, or used in connection with, its lines of railroad and
68 business, and certain bonds, stocks and other securities: that pursuant to the order of this court entered

March 31, 1933, the Railroad Company now retains and claims possession of a large amount of rolling stock and equipment and other personal property which is pledged under and covered by the First and Refunding Mortgage, and which, or an interest in which, is claimed by the petitioners as Trustees as aforesaid, which petitioners cannot, without the accounting hereinafter prayed, more particularly and fully describe; that pursuant to the order of this court entered March 31, 1933, said Railroad Company also holds and retains and claims title to certain of the tolls, income, rents, revenues, issues and profits thereof which are also subject to and covered by the petitioners' said mortgage lien, and are likewise claimed by them as Trustees as aforesaid. The petitioners are advised and therefore aver that by reason of the premises and of the matters hereinbefore in this petition alleged, and of the defaults hereinbefore in this petition alleged, as well as by reason of the impairment of and danger and injury to the security of their said mortgage lien hereinbefore alleged, and the further danger to the security of said mortgage lien by reason of the situation in this paragraph shown, the petitioners are entitled to file this petition and to have the relief herein prayed, and to have all such tolls, income, rents, revenues, issues and profits of the Railroad Company and every part thereof segregated and sequestered for the benefit of petitioners as such Trustees and of the holders of the First and Refunding Mortgage Bonds and interest obligations secured by their said mortgage lien; and the petitioners hereby demand that said
69 tolls, income, rents, revenues, issues and profits be so segregated and sequestered as aforesaid, and be applied, subject only to such expenses and other uses as may legally and properly, having due regard to the rights of petitioners and the holders of the First and Refunding Mortgage Bonds, be incurred and made in the operation and preservation of the property, rights and franchises covered by petitioners' said mortgage lien, to and for the benefit of petitioners, as such Trustees, and of the holders of the First and Refunding Mortgage Bonds and interest obligations, and to and for the proper protection of petitioners' said mortgage lien and the security thereof.

25. By reason of the premises the petitioners, as Trustees of the First and Refunding Mortgage, are unable adequately to execute their said trust in the manner specified and provided in and by the First and Refunding Mortgage without the aid and interposition of this Honorable Court, nor can their said trust be executed, as the petitioners are advised and charge, and the rights of all the parties in in-

terest be ascertained and fully protected otherwise than by segregating and sequestering the tolls, income, rents, revenues, issues and profits of the Railroad Company and every part thereof.

Wherefore, the petitioners pray:

1. That the petitioners be permitted to intervene generally in the above entitled proceeding for the purpose of protecting their rights as Trustees under the First and Refunding Mortgage and the rights of the holders of the First
70 and Refunding Bonds issued thereunder, and further and more specifically for the purposes of this petition.

2. That the First and Refunding Mortgage, dated April 2, 1917, and the supplements thereto, executed and delivered to the Trustees therein named, may be decreed to be valid and subsisting liens, upon all of the railroads and property, real and personal, rights, privileges and franchises in the First and Refunding Mortgage and said supplements described or thereby conveyed or transferred or intended so to be, or which have become subject thereto (save and except such property as may have been duly released from the lien thereof), and upon the tolls, income, rents, revenues, issues and profits of the Railroad Company and every part thereof, prior and superior to the interests or liens or claims of the debtor Missouri Pacific Railroad Company.

3. That the nature, extent and character of the said property and premises may be ascertained and determined; that an account be taken of all the railroads and property, real, personal and mixed, which belonged to the Railroad Company at the date of the First and Refunding Mortgage and of all the railroads, property, additions, extensions, improvements, renewals and replacements acquired by the Railroad Company since the date of the First and Refunding Mortgage.

4. That all tolls, income, rents, revenues, issues and profits of the mortgaged property and every part thereof, as shall come into the possession of the Railroad Company or of any trustee or trustees thereof appointed in this
71 proceeding be impounded as of the date of the filing of this petition (without waiver of any claim of petitioners to tolls, income, rents, revenues, issues and profits, accruing prior to the filing of this petition) and segregated and sequestered by or under the direction of this Honorable Court for the benefit of petitioners, as Trustees, and of the holders of the First and Refunding Bonds and interest obligations secured by the said mortgage lien and be applied

to and for their benefit, subject only to such expenses and other uses as may legally and properly be incurred in the operation and preservation of said property, having due regard for the rights of petitioners and holders of the First and Refunding Bonds and for the protection of the security of said mortgage lien, and that the rights of petitioners, as Trustees, and of the holders of the First and Refunding Bonds and interest obligations may be carefully and fully preserved.

5. That the debtor Railroad Company be required to make answer to all and singular the matters hereinbefore stated and charged, but not under oath, answer under oath being hereby expressly waived, and to stand to and abide by and perform such orders, directions or decrees as shall be made herein and as to your Honors shall seem equitable and just.

6. That the petitioners may have such other and further relief in the premises as the nature and circumstances of this proceeding may require and as to this Honorable Court shall seem meet.

72 And the petitioners, as in duty bound, will ever pray.

GUARANTY TRUST COMPANY
OF NEW YORK,
Corporate Trustee,
(Seal) By M. P. Callaway, Vice-President.

Dated June 7, 1933.

Attest:
M. Kuhn,
Asst. Secretary.

BENJAMIN F. EDWARDS,
Individual Trustee.

DAVIS, POLK, WARDWELL,
GARDINER & REED,
15 Broad Street, New York, N. Y., and

NAGEL, KIRBY & SHEPLEY,
918 Security Building,
St. Louis, Missouri,
Solicitors for Petitioners.

Daniel N. Kirby,
Allen C. Orrick,
Edwin S. S. Sunderland,
Leighton H. Coleman,
Of Counsel.

73 United States of America,
State of Missouri,
City of St. Louis—ss.

Merrel P. Callaway, being duly sworn, deposes and says that he is an officer, to-wit: a vice-president of Guaranty Trust Company of New York, one of the petitioners above named; that he has read the foregoing petition and knows the contents thereof; that the allegations contained therein in respect of the acts of the Guaranty Trust Company of New York are true to his own knowledge, and that as to all other allegations contained therein he is credibly informed and believes that the same are true; that the seal affixed to said petition is the corporate seal of the said petitioner and was so affixed by its authority.

MERREL P. CALLAWAY.

Subscribed and sworn to before me this 7th day of June, 1933.

A. ELLA KLOBASA,
Notary Public.

(Seal)

My term ends August 27, 1933.

United States of America,
Eastern District of Missouri,
State of Missouri—ss.

Benjamin F. Edwards, being duly sworn, deposes and says that he is one of the petitioners above named; that he has read the foregoing petition and knows the contents thereof; that the allegations contained therein in respect of the
74 acts of this deponent are true to his own knowledge, and that as to all other allegations contained therein he is credibly informed and believes that the same are true.

BENJAMIN F. EDWARDS.

Subscribed and sworn to before me this 7 day of June, 1933.

A. ELLA KLOBASA,
Notary Public.

(Seal)

My term ends August 27, 1933.

Filed Jun. 7, 1933. Jas. J. O'Connor, Clerk.

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76 (Order Granting Petition of Guaranty Trust Company, et al., for Leave to Intervene, etc.)

This cause coming on further to be heard on this day upon the petition dated June 7th, 1933, of Guaranty Trust Com-

pany of New York and Benjamin F. Edwards, as Trustees under the First and Refunding Mortgage of Missouri Pacific Railroad Company, dated April 2, 1917, for leave to intervene in this cause, for a segregation of the tolls, income, rents, revenues, issues, and profits of the property subject to
77 the First and Refunding Mortgage, and for other relief, and the Court having heard the arguments of counsel and being fully advised in the premises:

It Is Ordered, Adjudged, and Decreed, as follows:

1. That Guaranty Trust Company of New York and Benjamin F. Edwards, as Trustees under the First and Refunding Mortgage of Missouri Pacific Railroad Company, dated April 2, 1917 (hereinafter called the First and Refunding Mortgage), be and they hereby are permitted to intervene, as such Trustees, in this cause for the purpose of protecting their rights as such Trustees and the rights of the holders of the bonds issued thereunder (hereinafter called the First and Refunding Bonds), and all notices of further proceedings in this cause shall be served upon Messrs. Davis, Polk, Wardwell, Gardiner & Reed, 15 Broad Street, New York, N. Y., and Messrs. Nagel & Kirby, 918 Security Building, St. Louis, Missouri, Solicitors for said Trustees, pursuant to the rules and practice of this Court.

2. That Missouri Pacific Railroad Company, Debtor, may file herein an answer to said petition within 20 days from the date of this order, and that said petition shall thereupon come on to be heard before this Court on the 27th day of June, 1933, at 10 o'clock, in the forenoon, at which time all parties to this proceeding shall be entitled to be heard upon the matters referred to in said petition.

Dated June 7, 1933.

C. B. FARIS,
District Judge.

Filed June 7, 1933. Jas J. O'Connor, Clerk.

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80 (Answer of Missouri Pacific Railroad Company to Motion of Reconstruction Finance Corporation for Appointment of Trustees.)

Now comes Missouri Pacific Railroad Company, Debtor, by its attorneys, and for answer to the motion of Reconstruction Finance Corporation filed herein, in which it asks for the appointment of a trustee or trustees of Debtor's estate, states:

1. The Debtor admits that Reconstruction Finance Corporation is a creditor of the Debtor, with a substantial interest in these proceedings.

2. The Debtor admits the execution by it of the contracts referred to in said motion.

3. The Debtor admits that, at the time of the execu-
81 tion of said contracts, the Alleghany Corporation referred to in said motion was the owner of a majority of the stock of the Debtor and the owner of a majority of the stock of the Terminal Shares, Inc.

4. The Debtor submits that, under the allegations set forth in said motion, there is no sufficient showing to require the appointment of a trustee or trustees, yet the Debtor interposes no objection to such appointment if and when the Court shall deem it necessary or desirable to make the same.

5. Debtor further submits that the question, whether or not the contracts referred to in said motion may and should be repudiated, necessarily requires a detailed inquiry into the facts, and such question should be determined after full hearing before a Special Master appointed by order of this Court, in accordance with the statute in such cases made and provided.

6. The Debtor expressly denies each and every allegation contained in said motion, not herein expressly admitted.

Wherefore, Missouri Pacific Railroad Company, Debtor, prays the judgment of the Court as to whether or not said motion should be granted.

MISSOURI PACIFIC RAILROAD
COMPANY, Debtor,
By Paul J. Bickel,
Thos. T. Railey,
Edw. J. White,
Its Attorneys.

Filed Jun. 22, 1933. Jas. J. O'Connor, Clerk.

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84 Order Appointing Trustees.

It appearing to the Court that it is advisable at this time to appoint Trustees of the estates of all of the Debtors heretofore or hereafter made parties to this proceeding, and it appearing further that the Interstate Commerce Commission has selected and designated a panel of standing trustees, qualified for service as such, pursuant to subdivision (c) of

Section 77 of Chapter VIII of the Acts of Congress relating to Bankruptcy, which panel contains the names of L. W. Baldwin and Guy A. Thompson, both of St. Louis, Missouri,

It Is Ordered:

1. That the said L. W. Baldwin and Guy A. Thompson be and they are hereby appointed temporarily
85 Trustees of all and singular the railroads, lands, properties, estates, rights and franchises, of whatever character and wherever situated, of Missouri Pacific Railroad Company; New Orleans, Texas & Mexico Railway Company; International-Great Northern Railroad Company; Missouri Pacific Railroad Corporation in Nebraska; The Beaumont, Sour Lake & Western Railway Company; St. Louis, Brownsville & Mexico Railway Company; San Antonio, Uvalde & Gulf Railroad Company; and Houston North Shore Railway Company, Debtors; which appointment, as well as the other provisions of this order, shall be effective as of the beginning of business on July 1, 1933. Such appointment shall also apply to the estates of all Debtors hereafter becoming parties to this proceeding, from and after the respective dates of approval of the petitions of such subsequent Debtors. The said Trustees shall have all of the title, and subject to the control of this Court and consistently with the provisions of Section 77 of Chapter VIII of the Acts of Congress relating to Bankruptcy shall exercise all of the powers of Trustees appointed pursuant to Section 44 or any other section of the Acts of Congress relating to Bankruptcy.

2. That said Trustees shall have all of the powers, rights and privileges heretofore granted to or conferred upon the respective Debtors, or any of them, pursuant to any and all of the orders heretofore entered by this Court in this proceeding, and each and all of the orders heretofore entered in this proceeding shall, with respect to the Trustees and the property in their possession, be of like force and effect as
86 though said Trustees were therein specifically named in place of said respective Debtors, all of said orders being hereby incorporated in and made a part of this order by reference. The Trustees shall pay out of the funds coming into their hands, as such Trustees, the cost of maintaining the corporate organization of the Debtors, in addition to the necessary expense of preserving their records, registration and transfer of their stocks and bonds, and Trustees' charges under indentures under which securities of the Debtors have been issued.

3. That within ten (10) days from and after July 1, 1933, said Trustees shall each execute and file with the Clerk of

this Court a bond or bonds with one or more sureties approved by the Clerk of this Court, for the benefit of whom it may concern, in the sum of $50,000, conditioned to the effect that they will well and truly perform the duties of their office, and duly account for all moneys and property whatsoever which may come into their hands, and abide by and perform all things which they shall be directed by the Court to do.

4. That the Debtors shall give notice to their creditors and stockholders of a hearing to be held before the undersigned Judge, in the Court Room of the United States District Court, Federal Building, St. Paul, Minnesota, on the 25th day of July, 1933, at eleven o'clock in the forenoon, Central Standard Time, to determine whether such appointment of said Trustees shall be made permanent or shall be terminated, or a substitute Trustee or Trustees or an additional Trustee or Trustees shall be appointed by the Court, by publishing notice of such hearing once a week for two consecutive weeks in one daily newspaper published and of
general circulation in each of the cities of St. Louis
87 and Kansas City, Missouri; Houston, Texas; Omaha,
Nebraska; Little Rock, Arkansas; New Orleans, Louisiana, and New York, New York.

5. That all persons, firms and corporations having in their possession any of the property of the Debtors are hereby ordered to deliver the same to the Trustees, and to make such transfers, assignments and conveyances in connection therewith as may be necessary and proper; and each and every of the officers, directors, agents and employees of the Debtors is hereby required to turn over and deliver to said Trustees, or their duly constituted representatives, any and all books of account, vouchers, papers, deeds, contracts, notes, securities, accounts, moneys or other property in his or their hands, or under his or their control belonging to or in the possession of the Debtors, and to abide by and conform to such orders as may be given from time to time by said Trustees, or their duly constituted representatives, in conducting the operation of the properties of the Debtors and in the discharge of their duties as Trustees.

6. That the Court reserves full right and jurisdiction to make from time to time such additional orders herein as to the Court shall seem proper, as well as any orders amplifying, extending, limiting or otherwise modifying this order,

and in all respects to regulate and control the conduct of said Trustees.

C. B. FARIS,
District Judge.

Dated June 22d, 1933.

Filed June 22, 1933. Jas. J. O'Connor, Clerk.

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88 (Order Relating to Matter of Keeping Books by Missouri Pacific Railroad Company, etc.)

This cause coming on further to be heard on this day upon the petition dated June 7, 1933, of Guaranty Trust Company of New York and Benjamin F. Edwards, as Trustees under the First and Refunding Mortgage of Missouri Pacific Railroad Company, dated April 2, 1917, and upon the answer thereto filed herein of Missouri Pacific Railroad Company, Debtor, and the Court having heard the arguments of counsel and being fully advised in the premises:

89 It Is Ordered, Adjudged and Decreed as follows:

1. That until further order of this Court, Missouri Pacific Railroad Company, Debtor, shall keep its books of account in such manner as to show all tolls, income, rents, revenues, issues and profits derived from the property of said Debtor which is subject to the lien of the First and Refunding Mortgage of said Debtor, dated April 2, 1917, which amount, for the purposes hereof, shall be determined as follows:

From the gross income of the Debtor there shall be deducted the following:

(a) All administrative and operating expenses of the Debtor (including taxes) according to the accounting practice prescribed by the rules and regulations of the Interstate Commerce Commission.

(b) All dividends, interest and other income from securities not pledged under said First and Refunding Mortgage.

(c) All interest payments on the following outstanding securities or other obligations of the Debtor or its predecessors in interest constituting a lien or charge against property owned by the Debtor, to-wit:

First Mortgage Four Per Cent Gold Bonds of Pacific Railroad (of Missouri) (Extended), dated August 1, 1868—$6,996,000 outstanding.

Second Mortgage Five Per Cent Bonds of Pacific Railroad (of Missouri) (Extended), dated July 1, 1871—$2,573,000 outstanding.

First Mortgage Four and One-Half Per Cent Bonds of Pacific Railroad (of Missouri), Carondelet Branch (Extended), dated October 1, 1873—$237,500 outstanding.

90 Third Mortgage Four Per Cent Bonds of Missouri Pacific Railway Company (Extended), dated November 1, 1876,—$3,828,000 outstanding.

First Mortgage Four Per Cent Bonds of Little Rock & Hot Springs Western Railroad Co., dated July 1, 1899—$1,140,000 outstanding.

River and Gulf Divisions, First Mortgage, Four Per Cent Gold Bonds of St. Louis, Iron Mountain & Southern Railway Company, dated May 1, 1903—$34,548,000 outstanding.

Certificates Series A issued by Guaranty Trust Company of New York, Trustee under Texarkana Union Station Trust, interest rate five per cent, dated December 1, 1927—$1,500,000 outstanding, on which Missouri Pacific Railroad Company's primary liability is $450,000.

Equipment Gold Notes Series 41 of Missouri Pacific Railroad Company, interest rate six per cent, dated January 15, 1920—$1,386,800 outstanding.

Equipment Trust Certificates, Series A, of Missouri Pacific Railroad Company, interest rate six and one-half per cent, dated February 1, 1921—$459,000 outstanding.

Equipment Trust Certificates, Series B, of Missouri Pacific Railroad Company, interest rate five and one-half per cent, dated November 1, 1923—$1,596,000 outstanding.

Equipment Trust Certificates, Series C, of Missouri Pacific Railroad Company, interest rate five per cent, dated November 1, 1924—$1,820,000 outstanding.

Equipment Trust Certificates, Series D, of Missouri Pacific Railroad Company, interest rate five per cent, dated March 1, 1925—$4,116,000 outstanding.

91 Equipment Trust Certificates, Series E, of Missouri Pacific Railroad Company, interest rate four and one-half per cent, dated December 1, 1925—$2,576,000 outstanding.

Equipment Trust Certificates, Series F, of Missouri Pacific Railroad Company, interest rate four and one-half per cent, dated May 1, 1929—$7,140,000 outstanding.

Real Estate Security Mortgage Five Per Cent Bonds of Pacific Railroad (of Missouri), dated May 1, 1872—$799,000 outstanding.

Plaza-Olive Building First Mortgage Six Per Cent Gold Bonds, dated October 1, 1928—$809,000 outstanding.

Central Branch, Union Pacific Railway Company First Mortgage Four Per Cent Bonds, dated June 30, 1898—$1,628,000 outstanding.

2. This order shall take effect as of July 1, 1933.

3. The Court reserves for further adjudication all questions as to the marshaling of liens of all parties in interest in and to the property and income of said Debtor.

4. That all the provisions of this Order relative to Debtor shall apply to and bind any trustee or trustees thereof appointed by this Court in this proceeding. The right is reserved to the parties hereto to apply to this Court for any other instructions to the Debtor or to any trustee or trustees thereof appointed as aforesaid, and this Court reserves the full right and jurisdiction to make, from time to time, such further orders amplifying, extending, limiting or
92 otherwise modifying this Order as this Court may at any time deem proper, and in all respects and at all times to regulate and control the conduct of Debtor.

Dated June 22, 1933.

C. B. FARIS,
District Judge.

Approved:
Paul Bickel,
T. T. Railey,
Edw. J. White,
Daniel N. Kirby,
Edwin S. S. Sunderland,
Allen C. Orrick.

Filed June 22, 1933. Jas. J. O'Connor, Clerk.

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96 Order Supplementing Order Appointing Trustees.

Effective July 1, 1933, contracts or conveyances made pursuant to authority of orders entered in this proceeding shall be in the name of the Trustees, followed by designation of the particular Debtor or Debtors involved, as, for example:

L. W. Baldwin and Guy A. Thompson,
Trustees, Missouri Pacific Railroad Co., Debtor.

In actions by or against said Trustees and in the execution of checks, drafts, vouchers, bills of exchange, and bills of lading, they shall be similarly described.

Power to execute any such documents in their behalf may be delegated by said Trustees, and checks or vouchers so issued need not be countersigned as required by the usual rules in bankruptcy.

Employees and agents in the employ of the respective Debtors at the close of business June 30, 1933 shall, until otherwise directed by or in behalf of the Trustees, continue in their positions as agents of the Trustees in the operation of the property of the respective Debtors; and, as agents for said Trustees and under their direction, shall continue
97 to take any necessary action to protect the rights, interest, and corporate organization of the Debtor Companies.

Any cause of action accruing during the operation of the property of any of the Debtors under the jurisdiction of this Court in this proceeding may with like effect be prosecuted by or against the Trustees of the Debtor so involved as successors in interest in the estate of said Debtor. Until further order any claim against said Trustees may be filed without leave, and shall stand referred to Special Master Marion C. Early for hearing and report.

The Trustees in their capacity as such, may maintain suits to enforce any causes of action in behalf of any of the corporations, Debtors in this proceeding, accruing prior to the filing of such Debtor's petition for reorganization.

The Court reserves full right and jurisdiction to abrogate, amplify, limit, or otherwise modify this order, and in all respects to regulate and control the conduct of said Trustees.

C. B. FARIS,
District Judge.

Dated June 30, 1933.

Filed Jun. 30, 1933. Jas. J. O'Connor, Clerk.

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98 Order Confirming Appointment, Entered June 22, 1933, Temporarily Appointing Trustees.

On March 31, 1933, the Missouri Pacific Railroad Company, Debtor, filed its petition herein, stating that Debtor was un-

able to meet its obligations as they matured and would mature and that it desired to effect a plan of reorganization, in accordance with the provisions of Section 77 of Chapter VIII of the Act of Congress relating to bankruptcy.

The Court, being satisfied that said petition complied with said section of the Act and that it was filed in good
99 faith, thereupon, on March 31, 1933, approved said petition as properly filed, under said section of the Act, and entered an order, authorizing the Debtor, pending further order of this Court in the premises, to operate and maintain the railroads and property of the Debtor, wherever situated, and to manage and conduct its business, and to exercise general and specified powers, according to law, and subject to such supervision and control by the Court as the Court might exercise by further orders entered herein.

Subsequent to said date, petitions having been filed by various subsidiaries of said Missouri Pacific Railroad Company, Debtor, in this cause, and the Court, having fully considered said petitions, approved the same as properly filed under said section of the Act and entered orders authorizing said Debtors, pending the further order of this Court, in the premises, to continue to operate and maintain the railroads and property of said Debtors, wherever situated, and to manage and control the business of said Debtors and to exercise the different, sundry powers, according to law, specified in said orders, subject to the supervision and control of this Court as the Court might exercise by further orders entered herein.

On June 22, 1933, pursuant to the provisions of Section 77 of said Act, this Court entered an order, temporarily appointing L. W. Baldwin and Guy A. Thompson, both of St. Louis, Missouri, as temporary Trustees for the railroads and property of, all and singular, the railroads, lands, properties, estates rights and franchises, of whatever character and wherever situated, of all of said Debtors, said Trustees having been selected from a panel of standing trustees, desig-
100 nated and qualified for service as such, pursuant to sub-division (c) of Section 77 of Chapter VIII of the Act of Congress relating to bankruptcy, said order, appointing Trustees, to be effective as of the beginning of business on July 1, 1933, and said order specifying that such appointment should apply to the estates of all Debtors hereafter becoming parties to this proceeding from and after the respective dates of approval of the petitions of such subsequent Debtors.

And said order, temporarily appointing said Trustees, having provided that notice should be published once a week for two, consecutive weeks in one, daily newspaper of general circulation in each of the Cities of St. Louis, and Kansas City, Missouri; Houston, Texas; Omaha, Nebraska; Little Rock, Arkansas; New Orleans, Louisiana, and New York, New York, notifying all persons, firms and corporations having in their possession any of the property of the Debtors to deliver the same to the Trustees, and notifying the creditors and stockholders of said Debtors that, on the 25th day of July, 1933, at eleven o'clock in the Forenoon, Central Standard Time, the undersigned Judge, in the Court Room of the United States District Court at the Federal Building in St. Paul, Minnesota, would determine whether such appointment of such Trustees should be made permanent or should be terminated or a substitute Trustee or Trustee should be appointed by the Court, and, it appearing to the Court that, within ten days from and after July 1, 1933, each of said Trustees executed and filed with the Clerk of the United States District Court for the Eastern Division, Eastern Judicial District of Missouri, a bond, with solvent sureties, in the sum of
101 fifty thousand dollars ($50,000.00), each, conditioned, as required in said order temporarily appointing said Trustees, entered June 22, 1933, and it further appearing to the Court that said Debtors have filed with the Court their report of compliance with said order, and that all known creditors and stockholders of the Debtors have been notified of this hearing, in accordance with the provisions of Section 77 of Chapter VIII of said Act, and this hearing being now held in accordance with said notice and the provisions of said Act, and certain creditors and stockholders of the Debtors having appeared by Counsel at this hearing, and the Court, having heard the arguments of said Counsel, and being duly advised in the premises and being of the opinion that the interests of all parties will be best conserved by affirming, until the further order of this Court, the order entered by the Court herein on June 22, 1933, temporarily appointing said L. W. Baldwin and Guy A. Thompson, Trustees of the railroads and properties of said Debtors; it is, therefore,

Ordered, Adjudged and Decreed that said order temporarily appointing said L. W. Baldwin and Guy A. Thompson, Trustees for the railroads and properties of said Debtors, entered June 22, 1933, Be, and the Same is Hereby, Confirmed and Approved, and said appointment of said Trustees is hereby made permanent, and the said L. W. Baldwin and Guy A. Thompson are hereby appointed permanent Trustees of, all and singular, the railroads, lands, properties, estates, rights

and franchises, of whatever character and wherever situated, of the

Missouri Pacific Railroad Company,

New Orleans, Texas & Mexico Railway Company,

International-Great Northern Railroad Company,

Missouri Pacific Railroad Corporation in Nebraska,

The Beaumont, Sour Lake & Western Railway Company,

The St. Louis, Brownsville and Mexico Railway Company,

San Antonio, Uvalde & Gulf Railroad Company,

Houston North Shore Railway Company

and

Missouri-Illinois Railroad Company,

and such appointments shall also apply to the estates of all Debtors hereafter becoming parties to this proceeding from and after the respective dates of the approval of the petitions of such subsequent Debtors.

And said Trustees shall have all the title and be subject to the control of the Court and, consistently with the provisions of Section 77 of Chapter VIII of the Act of Congress relating to bankruptcy, shall exercise all of the powers of trustees appointed pursuant to Section 44 or any other section of the Act of Congress relating to bankruptcy.

Such Trustees shall have all of the powers, rights and privileges heretofore granted to or conferred upon them while temporary Trustees, and all of the rights, powers and privileges heretofore granted to or conferred upon the respective Debtors, or any of them, pursuant to any or all of the orders heretofore entered by this Court in this proceeding, and each and all of the orders entered in this proceeding shall, with respect to the Trustees and the properties in their possession, be of like force and effect as though said Trustees were therein specifically named, instead of said respective Debtors, all of said orders being herein incorporated in and made a part of this order by reference.

And all persons, firms and corporations having in their possession any of the property of the Debtors or any of the prop-

erty of the Debtors subsequently becoming parties to this proceeding are hereby ordered to deliver the same to said Trustees and to make such transfers, assignments and conveyances in connection therewith as may be necessary and proper; and each and every of the officers, directors, agents and employes of the Debtors are hereby required to turn over and deliver to said Trustees, or their duly constituted representatives or agents, any and all books of account, vouchers, papers, deeds, contracts, notes, securities, accounts, moneys or other property in his or their hands, or under his or their control, belonging to or in the possession of any of said Debtors; and to abide by and conform to such orders as may be given from time to time by said Trustees, or their duly constituted representatives, in conducting the operations of the Debtors, and in the discharge of their duties as such Trustees.

And such Trustees are hereby authorized and directed to run, manage, maintain and, operate the railroads and properties of the Debtors, wherever situated, and to manage and conduct the business of each of said respective Debtors, and to exercise such sundry other powers according to law and subject to the supervision and control of the Court as the Court may exercise by other orders entered herein, all as set forth in the order of this Court temporarily appointing said Trustees, entered June 22, 1933, and in the sup-
104 plemental order appointing Trustees, entered June 30, 1933, and in the order granting Trustees authority to employ Attorneys, entered July 1, 1933.

And the Court reserves full right and jurisdiction to make, from time to time, such other and further orders as the Court shall deem proper, amplifying, extending, limiting or otherwise modifying such orders of June 22, 1933, temporarily appointing said Trustees, and said orders of June 30, 1933, and July 1, 1933, and, in all respects, to regulate and control the conduct of said Trustees.

C. B. FARIS,
U. S. District Judge.

Dated: St. Paul, Minn., July 25, 1933.

Received and filed Jul. 26, 1933. Jas. J. O'Connor, Clerk.

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106 Motion of Trustees for Authority to Pay Interest Due November 1, 1933, on the River & Gulf Division First Mortgage Bonds of the St. Louis, Iron Mountain & Southern Railway Company.

Come now the Trustees in the above-entitled cause and respectfully present to the Court:

That, because of the fact that the River & Gulf Division 4% First Mortgage Bonds of the St. Louis, Iron Mountain & Southern Railway Company, which matured May 1st, 1933, in the sum of $34,548,000.00, constituted a first lien upon the equipment, the collateral securities pledged there-
107 under, and the railroad of the Debtor, Missouri Pacific Railroad Company, for a distance of 781.47 miles, and the other facts presented to this Court in the application of the Debtor on May 3, 1933, the Court authorized the payment of the interest due on said bonds May 1st, 1933, in the sum of $690,960, which, in due course, was paid by said Debtor.

That the semi-annual interest upon said bonds, in the sum of $690,960, is due November 1, 1933, and, in the opinion of Trustees, it is advisable, in order to prevent a sacrifice of said mortgaged railroad and other property of the Debtor Railroad Company and the loss of its equity in said property and the loss thereof to its creditors, that said interest in the sum of $690,960, should be paid by the Trustees on November 1, 1933.

Wherefore, Trustees pray that the Court may enter an Order, authorizing the payment of said interest in said sum of $690,960.00 on November 1, 1933.

L. W. BALDWIN,
GUY A. THOMPSON,
Trustees.

Thos. T. Railey,
Edward J. White,
Attorneys for Trustees.

108 United States of America,
Eastern Judicial District of Missouri,
City of St. Louis, Missouri—ss.

L. W. Baldwin and Guy A. Thompson, being duly sworn, upon their oaths severally say that they have read the above and foregoing petition, and that the facts therein stated are true, as they verily believe.

L. W. BALDWIN,
GUY A. THOMPSON.

Subscribed and sworn to before me this 27th day of September, 1933.

My commission expires June 26th, 1937.

GEO. W. COLLINS,
(Seal) Notary Public.

Filed Sep. 28, 1933. Jas. J. O'Connor, Clerk.

110 Order Authorizing the Payment of Interest, Due November 1st, 1933, on River & Gulf Division 4% First Mortgage Bonds of the St. Louis, Iron Mountain & Southern Railway Company, in the Sum of $690,960.00.

Upon reviewing and considering the Motion of the Trustees herein regarding the $690,960.00 interest due November 1st, 1933, on the River & Gulf Division 4% First Mortgage Bonds of the St. Louis, Iron Mountain & Southern Railway Company:

It Is Ordered by the Court that the Trustees be, and they are hereby, authorized and instructed to pay out of
111 funds coming into their hands the interest on November 1st, 1933, upon said bonds, in the sum of $690,960.00, provided said sum, at the interest rate of 4% upon said bonds, shall be received by the holders of said bonds in full for all interest due upon said bonds up to November 1, 1933.

C. B. FARIS,
United States District Judge.

Dated Sept. 27, 1933.

Filed Sep. 28, 1933. Jas. J. O'Connor, Clerk.

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114 Record Entry of Filing of Petition to Impound Income.

(December 27, 1933.)

Petition of Bankers Trust Company, et al., Trustees of St. Louis, Iron Mountain & Southern Railway Company River & Gulf Division, First Mortgage, for leave to intervene, for an order impounding income subject to mortgage and for other relief, together with notice to docket same for hearing on this day, filed by leave. Order adjourning hearing on such petition until January 29th, 1934, filed.

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115 Petition of Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain and Southern Railway Company, River and Gulf Divisions First Mortgage Due May 1, 1933, for Leave to Intervene, for an Order Impounding the Income Subject to the Mortgage, and for Other Relief.

To the Honorable the Judges of the District Court of the United States for the Eastern Division, Eastern Judicial District of Missouri:

The petition of Bankers Trust Company and William H. Bixby as Trustees under the River and Gulf Divisions First Mortgage of St. Louis, Iron Mountain and Southern
116 Railway Company, dated May 1, 1903, respectfully shows as follows:

I. That your petitioner, Bankers Trust Company, is and at all of the times wherein it is hereinafter mentioned was, a corporation duly organized and existing under the laws of the State of New York, duly authorized and empowered to hold in trust the property conveyed, transferred, pledged and assigned upon the trusts hereinafter stated, and to execute and perform the trusts reposed in it under and by virtue of the Mortgage hereinafter described.

II. That on May 1, 1903, St. Louis, Iron Mountain and Southern Railway Company (hereinafter sometimes called the Railway Company) was a consolidated corporation organized and existing under the laws of the States of Missouri and Arkansas; and The Mercantile Trust Company was a corporation duly organized and existing under the laws of the State of New York, and was then and at all of the times wherein it is hereinafter mentioned duly authorized and empowered to hold in trust the property conveyed, transferred, pledged and assigned upon the trusts hereinafter stated, and to execute and perform the trusts reposed in it under and by virtue of the Mortgage hereinafter described.

III. That on or about May 1, 1903, the Railway Company, duly and in accordance with law and with its by-laws, and for lawful and proper purposes, determined to create a bonded indebtedness by the issue of bonds not exceeding the aggregate principal sum of fifty million dollars, to be known as St. Louis, Iron Mountain and Southern Railway Company River and Gulf Divisions First Mortgage Four Per Cent. Thirty Year Gold Bonds (hereinafter sometimes
117 called the Bonds), maturing May 1, 1933, and bearing interest at four per cent (4%) per annum to maturity, payable semi-annually, and to execute the Mortgage hereinafter referred to.

IV. That in order to secure the payment of the principal and interest of all of the Bonds at any time issued and outstanding, and to secure the performance of all of the covenants and conditions therein contained, and to declare the terms and conditions upon which the said Bonds were to be issued, the Railway Company, on or about May 1, 1903, duly made and executed under its corporate seal a Mortgage dated May 1, 1903, known as its River and Gulf Division

First Mortgage (hereinafter sometimes called the Mortgage), a copy of which will be submitted to the Court upon the hearing of this petition as Exhibit "A" hereto, and which your petitioners pray may be deemed incorporated herein with the same force and effect as if herein set forth at length; that in and by the terms of the Mortgage The Mercantile Trust Company and William K. Bixby, a resident of St. Louis, Missouri, were named as Trustees thereof; that the Mortgage was duly delivered to said Trustees, and said Trustees duly accepted the trusts thereunder; and that the Mortgage was duly recorded in the States of Illinois, Missouri, Arkansas, and Louisiana.

V. That on or about August 10, 1911, The Mercantile Trust Company was duly merged into Bankers Trust Company pursuant to a merger agreement between said corporations and the law of the State of New York; that Bankers Trust Company became a Trustee of the Mortgage in the place and stead of The Mercantile Trust Company as a result of such merger and pursuant to the provisions of
118 the Mortgage; and that Bankers Trust Company has continued to be and still is such Trustee.

VI. That on October 28, 1931, William K. Bixby, one of the original Trustees named in the Mortgage, died; and that on February 4, 1932, your petitioner, William H. Bixby, a resident of St. Louis, Missouri, was duly appointed as a Trustee of the Mortgage as provided therein in the place and stead of the said William K. Bixby, and that William H. Bixby has continued to be and now is such Trustee and a resident of St. Louis, Missouri.

VII. That bonds validly issued under and secured by the Mortgage in the sum of thirty-four million five hundred forty-eight thousand dollars ($34,548,000) are now outstanding. Each of said bonds and the Mortgage provides that principal and interest is payable in gold coin of the United States of the standard of weight and fineness prevailing on May 1, 1903.

VIII. That by the execution and delivery of the Mortgage, and as a result of the certification and delivery of Bonds by the Trustees thereof and the issuance of certificates by or on behalf of the Railway Company and its successor hereinafter mentioned as provided by the Mortgage, and by other acts and deeds of the parties to the Mortgage and their successors, the Trustees of the Mortgage have acquired and now have a valid and subsisting first lien on various and sundry lines of railroad and appurtenances, equip-

ment, bonds, stocks and other property, real, personal and mixed, having a value of many millions of dollars, including, among other property, that described in Petition No. 15 in this proceeding as follows:

119 Lines of Railroad	Miles
Des Peres Bridge Junction, Mo., to Top of Incline, Mo.	.54
Top of Incline, Ill., to Dupo Junction, Ill.	4.12
Vulcan, Ill., to Southern Connection, Ill.	2.32
Valley Junction, Ill., to Thebes, Ill.	119.33
Connection at Chester, Ill., to Chester & Mt. Vernon H. B. No. 6	.04
Main Line Connection, Ill., to Chester & Mt. Vernon Connection, Ill.	.26
M. H. & L. Connection, near New Latour, Ark., to M. H. & L. Connection, near McGehee, Ark.	81.80
Halley, Ark., to Clayton Junction, La.	140.61
Gorham, Ill., to Benton, Ill.	40.58
Bush, Ill., to East Carterville, Ill.	10.48
East Carterville, Ill., to Marion, West Conn., Ill.	5.82
East Carterville, Ill., to End of Track, near Hafer, Ill.	2.33
Marion Jct., Ill., to End of Track	.17
End of Track, near Herrin, Ill., to H. B. Herrin Extension, Ill.	.34
Marion, Ill., to Johnston City, Ill.	8.93
Connections at Herrin, Johnston City & Carterville, Ill.	2.16
Herrin Branch Connection, Ill., to M. & J. C. Connection, Ill.	4.81
Thebes Bridge Connection, Ill., to Thebes, Ill.	1.32
Connections at Thebes, Ill.	.11
Eudora, Ark., to Epps, La.	37.61
Cushman Branch Connection, Ark., to Carthage, Mo.	239.40
Crane, Mo., to Springfield, Mo.	35.28
C. R. I. & P. Connection, near Bridge Junction, Ark., to Marianna, Ark.	43.11
Total	781.47

120 Equipment:

29 Locomotives,
454 Gondola Cars,
22 Box Cars,
182 Coal Cars,

1 Flat Car,
1 Work Car,
4 Passenger Cars,
8 Electric Cars and
18 Ballast Cars and
Towboat Lockwood.

Securities:	Par Value
853 Bonds, First Mortgage, Union Railway Company (of Memphis)	$1,000,000.00
1 Bond, First Mortgage, Western Coal & Mining Company	$1,000,000.00

IX. That in and by the terms of the Mortgage the Railway Company granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred and set over to the Trustees, their successors and assigns forever

"any and all the rents, issues, profits, tools and other income of all lines of railway, extensions and branches, and any part thereof, which are now or may hereafter become subject to the lien hereof, and any and all the rights, privileges, franchises, properties, real or personal, rights and things which the Railway Company now owns or hereafter shall possess, or become entitled to possess, for the purpose of, or in connection with, any such line of railway, extension or branch now or hereafter subject to the lien of this Indenture."

The Mortgage further provided:

"All the covenants, agreements, stipulations and pro-
121 visions in this Indenture contained, by or relating to the Railway Company, shall bind and relate to its successors and assigns, whether so expressed or not; and every successor corporation which shall be lawfully vested with the ownership of the properties subject to this Indenture shall possess and may exercise each and every right and power hereunder of the Railway Company."

X. That in and by various assignments and conveyances, including a deed from Lee W. Hagerman as Special Master, and others, to Missouri Pacific Railroad Company, dated May 12, 1917, a deed from Lee W. Hagerman as Special Master, and others, to Missouri Pacific Railroad Company in Illinois, dated June 2, 1917, and a deed from Missouri Pacific Railroad Corporation in Illinois to Missouri Pacific Railroad Company, dated June 29, 1918, all or a large part of the property now subject to the lien of the mortgage was duly transferred and conveyed to Missouri Pacific Railroad Company, one of

the Debtors herein, or to one or more of the other Debtors herein, prior to the filing of Petition No. 1 in this proceeding, and title to said mortgaged property is now vested in the Trustees appointed in this proceeding as Trustees of the said Missouri Pacific Railroad Company or as Trustees of one or more of the various Debtors herein and all of said mortgaged property is now in the custody of this Court; and Missouri Pacific Railroad Company and its Trustees appointed in this proceeding are successors of the Railway Company under the Mortgage.

XI. That petitions and orders herein numbered respectively 1, 15, 40, 57, and 86 have been filed in this proceeding; that your petitioners pray that said petitions and orders, and such other petitions and orders as may be specified in any proceedings on this petition, may be deemed incorporated in this petition with the same force and effect as if set forth herein at length; but such incorporation shall be only for the purpose of showing that such petitions and orders have been filed in this proceeding and without prejudice to any right which your petitioners may have to controvert any allegation in any such petition or to appeal from, or move to vacate or modify, any such order.

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XII. Neither the principal of the Bonds nor any part thereof was paid on the date on which they matured, May 1, 1933, or has since been paid.

XIII. Your petitioners are informed and believe, and therefore allege, that some, but not all, of the holders of the Bonds have accepted the payment of interest pursuant to Order No. 86 herein.

Wherefore, your petitioners pray

1. That your petitioners be permitted to intervene generally in this proceeding for the purpose of protecting their rights as Trustees of the Mortgage;

2. That the Mortgage be declared to be a valid and subsisting first lien on the property referred to in Petition No. 15 herein and Paragraph IX of this petition; and that the nature, extent and character of the other property on which the Mortgage is a valid and subsisting lien, and the priority of such lien, may be determined;

3. That all the rents, issues, profits, tolls and other income, accruing from time to time from the property subject to the lien of the Mortgage and which may come into the possession of any Debtor or Trustee in this proceeding (whether or not any such Debtor be now a party

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to this proceeding, or any such Trustee shall have been already appointed) be impounded as of the date of, and from and after the filing of this petition (without waiver of any claim of your petitioners to rents, issues, profits, tolls and other income accruing prior to such date), and segregated and sequestered by or under the direction of the Court for the benefit of your petitioners as Trustees of the Mortgage; and that after the deduction of such expenses and other items as may be lawful and proper the same be paid over to your petitioners as such Trustees as soon as practicable from time to time;

4. That the lien of the Mortgage be determined to be in the sum of Thirty-four million five hundred and forty-eight thousand dollars ($34,548,000), with interest thereon from May 1, 1933, at the rate of six per cent per annum, less such amounts as shall have been accepted by holders of the Bonds on account of interest since May 1, 1933; that such sum and interest be determined to be payable in gold coin of the United States of the standard and weight and fineness prevailing on May 1, 1903, or, in the alternative, that any determination with respect to the right of the Trustees to payment in such gold coin be reserved without prejudice to any rights which the Trustees may have to payment in such gold coin on a final determination herein; that the determination of the amount of the lien of the mortgage be incorporated in a formal judgment or decree of this Court substantially equivalent to a judgment in an action to foreclose the Mort-
124 gage; and that the amount specified in such judgment or decree be determined to bear interest at the rate of six per cent per annum;

5. That the Court determine that any and all sums paid over to your petitioners as Trustees on account of the rents, issues, profits, tolls and other income of the property subject to the lien of the Mortgage may be applied, after deduction by your petitioners as Trustees of their expenses and of just and reasonable compensation for your petitioners and for the service of all counsel, agents, and employees properly engaged and employed by them, first on account of interest accruing from time to time on the amount to be specified in the judgment or decree hereinabove prayed for, any balance remaining to be applied on account of so much of said judgment as may represent interest on the Mortgage or the Bonds, and any further balance remaining to be applied on account of so much of said judgment as may represent the principal of the Mortgage or the Bonds; and that the Court determine that any such sums of money so paid to your petitioners as Trus-

tees otherwise than in gold coin on account of any obligation payable in gold coin may be accepted by such Trustees at the market value of such sums of money in such gold coin at the times of such payments;

6. That your petitioners as such Trustees may have such other and further relief as they may be entitled to under the terms of the Mortgage and the provisions of law;

7. That the petition, and any and all proceedings pursuant thereto, may be without prejudice to any other rights or claims which your petitioners as such Trustees, or any
125 holders of the bonds, may have against any of the Debtors or Trustees for Debtors who may now or hereafter be parties to this proceeding, including any unsecured claims which they or any of them may have under subdivision (g) of Section 77 of the Bankruptcy Act.

Dated, December 4, 1933.

BANKERS TRUST COMPANY,
(Seal) By R. G. Page.

WILLIAM H. BIXBY,
As Trustees of the St. Louis, Iron Mountain and Southern Railway Company River and Gulf Divisions First Mortgage Due May 1, 1933,
Petitioners.

ALEXANDER & GREEN,
120 Broadway, New York, N. Y.,
Attorneys for Petitioners.

Attest:
W. C. Meyers,
Asst. Secretary.

126 United States of America,
State of New York,
Southern District of New York—ss.

R. G. Page, being duly sworn, deposes and says that he is an officer, to-wit, a vice president of Bankers Trust Company, one of the petitioners above named; that he has read the foregoing petition and knows the contents thereof; that the allegations contained therein with respect to the acts of Bankers Trust Company are true to his own knowledge, and that as to all other allegations contained therein he is credibly informed and believes that the same are true; that the seal

affixed to said petition is the corporate seal of the said petitioner and was so affixed by its authority.

R. G. PAGE.

Subscribed and sworn to before me this 5th day of December, 1933.

(Seal) H. H. GRIESMER,
Notary Public, Westchester County.
Certificate Filed in New York Co. No. 485. New York County Register's No. 5-G-177. Commission expires March 20, 1935.

127 United States of America,
State of Missouri,
City of St. Louis, Eastern Division,
Eastern Judicial District—ss.

William H. Bixby, being duly sworn, deposes and says that he is one of the petitioners above named; that he has read the foregoing petition and knows the contents thereof; that the allegations contained therein with respect to the acts of this deponent are true to his own knowledge, and that as to all other allegations contained therein he is credibly informed and believes that the same are true.

WILLIAM H. BIXBY.

Subscribed and sworn to before me this 7th day of December, 1933.

(Seal) EDWARD N. SANDHOFER,
Notary Public, in and for the City of St. Louis, State of Missouri.

My Commission Expires April 19, 1936.

Filed Dec. 27, 1933. Jas. J. O'Connor, Clerk.

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131 Petition of Reconstruction Finance Corporation and United States of America for Leave to Intervene.

To the Honorable, the Judges of the District Court of the United States for the Eastern Division, Eastern District of Missouri:

The petition of Reconstruction Finance Corporation and of the United States of America respectfully shows as follows:

I. Your petitioner, Reconstruction Finance Corporation, is now and has been at all times since the Act of Congress creating it, a corporation duly organized and existing
132 pursuant to the Reconstruction Finance Corporation Act (47 Stat. at L., 5; Title 15, U. S. C. A., ch. 14); that all the capital stock of said Corporation is owned by petitioner, the United States of America, and that the Board of Directors of the Corporation, including the Secretary of the Treasury, who is ex-officio, a member, are appointed by the President of the United States by and with the advice and consent of the Senate; that said Corporation, among other things, is an agency of the United States for various fiscal and other purposes and an instrumentality of government in carrying out policies of the United States, which joins herein by direction of the Attorney General.

II. That said Corporation on the following dates made loans to the debtor, Missouri Pacific Railroad Company, in the following amounts:

(a)	March 31, 1932	$ 2,950,000.00
(b)	April 8, 1932	805,000.00
(c)	April 29, 1932	3,195,000.00
(d)	October 1, 1932	10,150,000.00
(e)	February 1, 1933	3,000,000.00
(f)	March 1, 1933	3,034,800.00

for all of which the debtor duly executed and delivered to said Corporation its promissory notes and secured the same by the following collateral:

Temporary, First and Refunding, 5% Mortgage Gold Bonds, Series I, of the Missouri Pacific Railroad, due 2/1/81	$25,050,000.00
First and Refunding 5% Mortgage Gold Bonds, Series I, of the Missouri Pacific Railroad, due 2/1/81	7,200,000.00
133 Missouri Pacific Railroad's 25 year Convertible Gold Bonds, Series A 5½%, due 5/1/49	899,000.00
927 shares ($100.00 par value) Capital stock of the American Refrigerator Transit Company	.....
Temporary Certificate, Series A, 6%, Regular Refunding and Improvement Mortgage Gold Bonds of the Denver and Rio Grande Western Railroad Company, due 10/1/74	1,000,000.00

1,600 shares Capital Stock of the Fort Worth Belt Railway Company	.....
5½% Unsecured Demand note of the International Great Northern Railroad Company..	1,622,200.00
6% Unsecured Demand note of the International Great Northern Railroad Company ..	864,310.35
6% Adjustment Mortgage, Series A, 30 year Gold Bond of the International Great Northern Railroad Company, due 7/1/52..	2,095,000.00
First Mortgage 6% Gold Bonds of the Interstate Railway Company, due 7/1/20.....	1,622,000.00
Temporary, First Mortgage, 4½% Gold Bond Series D, of the New Orleans, Texas and Mexico Railway Company, due 8/1/56....	1,900,000.00
5,050 shares Capital Stock ($100.00 par value) of the New Orleans, Texas and Mexico Railway Company	.....
134 First Mortgage, 6% Bonds of the Prescott and Northwestern Railroad Company, due 10/1/32, extended to 10/1/34...	75,000.00
114,750 shares Common Stock of the Texas and Pacific Railway Company.....	.....
Demand notes of the New Orleans, Texas and Mexico Railway Company, secured by 74,989 shares Capital Stock ($100.00 par value) of the International Great Northern Railroad Company	9,955,226.78

III. That all of said notes bear interest from their dates, respectively, at the rate of 6% per annum and that all of them are wholly in default, both as to principal and interest; that nothing has been paid thereon by or for the debtor since the filing of its petition herein, and that the amount now due and payable by the debtor to the Corporation on account of the principal thereof is $23,134,800, with accrued and unpaid interest thereon through December 31, 1933, amounting to $1,521,193.75, amounting to a total of $24,655,993.75 on account of principal and interest as of December 31, 1933.

That the value of the collateral hereinbefore described and held by the Corporation as security is substantially less than the amount owed to it by the debtor and that much of the collateral itself is also in default; that it is impossible at this time to realize from said collateral an amount sufficient to

discharge the indebtedness thereby secured to the Corporation.

IV. That on December 27, 1933, the Bankers Trust Company and William H. Bixby, Trustees of the St.
135 Louis, Iron Mountain and Southern Railway Company, River and Gulf Divisions First Mortgage, due May 1, 1933, were permitted by this court to file their petition for leave to intervene generally in this proceeding, and that hearing thereon by this court is set for January 29, 1934; that in their petition, in addition to praying for permission to intervene generally in this proceeding for the purpose of protecting their rights as trustees of said mortgage, said petitioners prayed as follows:

"2. That the Mortgage be declared to be a valid and subsisting first lien on the property referred to in Petition No. 15 herein and Paragraph IX of this petition; and that the nature, extent and character of the other property on which the Mortgage is a valid and subsisting lien, and the priority of such lien may be determined;

"3. That all the rents, issues, profits, tolls and other income, accruing from time to time from the property subject to the lien of the Mortgage and which may come into the possession of any Debtor or Trustee in this proceeding (whether or not any such Debtor be now a part of this proceeding, or any such Trustee shall have been already appointed) be impounded as of the date of, and from and after the filing of this petition (without waiver of any claim of your petitioners to rents, issues, profits, tolls and other income accruing prior to such date, and segregated and sequestered by or under the direction of the Court for the benefit of your petitioners as Trustees of the Mortgage; and that after the deduction of such expenses and other items as may be lawful and proper the same be paid over to your petitioners as such Trustees as soon as practicable from time to time;

136 "4. That the lien of the Mortgage be determined to be in the sum of Thirty-four Million five hundred and forty-eight thousand dollars ($34,548,000), with interest thereon from May 1, 1933, at the rate of six per cent per annum, less such amounts as shall have been accepted by holders of the Bonds on account of interest since May 1, 1933; that such sum and interest be determined to be payable in gold coin of the United States of the standard and weight and fineness prevailing on May 1, 1903, or, in the alternative, that any determination with respect to the right of the Trustees to payment in such gold coin be reserved without prej-

udice to any rights which the Trustees may have to payment in such gold coin on a final determination herein; that the determination of the amount of the lien of the mortgage be incorporated in a formal judgment or decree of this Court substantially equivalent to a judgment in an action to foreclose the Mortgage; and that the amount specified in such judgment or decree be determined to bear interest at the rate of six per cent per annum.

"5. That the Court determine that any and all sums paid over to your petitioners as Trustees on account of the rents, issues, profits, tolls and other income of the property subject to the lien of the Mortgage may be applied, after deduction by your petitioners as Trustees of their expenses and of just and reasonable compensation for your petitioners and for the service of all counsel, agents, and employees properly engaged and employed by them, first on account of interest accruing from time to time on the amount to be specified in the judgment or decree hereinabove prayed for, any balance remaining to be applied on account of so much of said judgment as may represent interest on the Mortgage or the
137 Bonds, and any further balance remaining to be applied on account of so much of said judgment as may represent the principal of the Mortgage or the Bonds; and that the Court determine that any such sums of money so paid to your petitioners as Trustees otherwise than in gold coin on account of any obligation payable in gold coin may be accepted by such Trustees at the market value of such sums of money in such gold coin at the time of such payments;

"6. That your petitioners as such Trustees may have such other and further relief as they may be entitled to under the terms of the Mortgage and the provisions of law;

"7. That this petition, and any and all proceedings pursuant thereto, may be without prejudice to any other rights or claims which your petitioners as such Trustees, or any holder of the Bonds, may have against any of the Debtors or Trustees for Debtors who may now or hereafter be parties to this proceeding, including any unsecured claims which they or any of them may have under subdivision (g) of Section 77 of the Bankruptcy Act."

V. That your petitioners will be adversely and gravely affected and their rights seriously impaired if the prayer of the Trustees above-named should be granted, for that, among other reasons, none of the collateral hereinbefore described and held by said Corporation to secure the amount owed to it by the debtor, as aforesaid, is entitled to a lien

on the properties of the debtor covered by said mortgage prior or superior to the lien alleged to be granted by said mortgage to the Trustees thereof and the revenues of the debtor applicable to the payment of its indebtedness
138 to said Corporation, as also to the payment of its obligations constituting part of the collateral held by said Corporation, will be substantially diminished and wholly inadequate if such income should be segregated and set apart for the payment of sums alleged to be due and secured by said mortgage on any basis or in any manner other than the par or face amount thereof in lawful money of the United States; and such payment on the basis or in the manner prayed by said Trustees would have the practical effect of enhancing and increasing the indebtedness secured by said mortgage in a large amount beyond what is due and payable in lawful money of the United States, while at the same time and in the same proportion reducing the amount available and payable to said Corporation on the indebtedness to it and for which it is willing to accept such lawful money; that payment to said Trustees in other than lawful money will be unauthorized and unlawful, as petitioners are advised.

VI. Not only will your petitioners be adversely and gravely affected, and their rights seriously impaired if the prayer of the Trustees above-named should be granted in this proceeding, in the respects mentioned, but relatively the same situation exists or will arise in other similar proceedings involving many millions of dollars, payable to said Corporation and other creditors, by railway companies and other corporations in process of liquidating their indebtedness or in process of reorganization, so that the questions now presented are of paramount importance and this Court's action thereon will be of far-reaching consequence to petitioners in this and similar proceedings and to the United States in general.

139 VII. Your petitioners allege further, and the United States particularly alleges, that the 73rd Congress, among other measures dealing with the emergency then and now existing, adopted Public Resolution No. 10 (a joint resolution to secure uniform value to the coins and currencies of the United States) as follows:

"Whereas the holding of or dealing in gold affect the public interest, and are therefore subject to proper regulation and restriction; and

"Whereas the existing emergency has disclosed that provisions of obligations which purport to give the obligee a right to require payment in gold or a particular kind of coin, or currency of the United States, or in an amount in money of the United States measured thereby, obstruct the power of the Congress to regulate the value of the money of the United States, and are inconsistent with the declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in the payment of debts. Now, therefore, be it

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. Any such provision contained in any law authorizing obligations to be issued by or under authority of the United States, is hereby repealed, but the repeal of any such provision shall not invalidate any other provision or authority in such law.

"(b) As used in this resolution, the term 'obligation' means an obligation (including every obligation of and to the United States, excepting currency) payable in money of the United States; and the term 'coin or currency' means coin or currency of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations.

"Sec. 2. The last sentence of paragraph (1) of subsection (b) of section 43 of the Act entitled 'An Act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes', approved May 12, 1933, is amended to read as follows:

" 'All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal

Reserve banks and national banking associations) heretofore or hereinafter coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues, except that gold coins, when below the standard weight and limit of tolerance provided by law for the
141 single piece, shall be legal tender only at valuation in proportion to their actual weight.' "

That said resolution, which was approved June 5, 1933, is in full force and effect, and it not only prohibits payment of the bonds and interest secured by the mortgage to said Trustees in gold coin or in other than lawful money of the United States, but expressly declares to be against public policy the clause or provision relied upon as authorizing and requiring payment "in gold coin of the United States of the standard of weight and fineness prevailing on May 1, 1903," and they have both the right and duty of intervening for the purpose of contesting any assertion or claim of said Trustees or others interested to the contrary, as they are advised.

Wherefore, your petitioners pray this honorable Court:

(1) That said Corporation be permitted to intervene generally in this proceeding and to become a party thereto.

(2) That your petitioners be permitted to file an answer to the petition of Bankers Trust Company and William H. Bixby, Trustees of the St. Louis, Iron Mountain and Southern Railway Company, River and Gulf Divisions First Mortgage, due May 1, 1933, with the right to file motions, pleadings and other papers, to be heard by testimony and argument in opposition to said petition, and to take such steps and proceedings in connection therewith or resulting therefrom as may be proper; and

(3) That the United States, either by joinder with
142 said Corporation, because of its ownership thereof and interest therein, or separately in its sovereign capacity, be allowed to assert the full force and effect which ought to be given to the Public Resolution hereinbefore set out, and to maintain the same against said trustees and others affected thereby.

RECONSTRUCTION FINANCE
CORPORATION,
By Stanley Reed, General Counsel.

UNITED STATES OF AMERICA,
By Angus D. MacLean,
Assistant Solicitor General.

Authorized and Approved:

HOMER CUMMINGS,
Attorney General.

MAX O'RELL TRUITT, Counsel.

GREEN, HENRY & REMMERS,
JOHN RAEBURN GREEN,
C. M. CLAY, Of Counsel.
Attorneys for Petitioners.

143 District of Columbia,
City of Washington—ss.

The undersigned, H. A. Mulligan, being duly sworn, deposes and says that he is Treasurer of the Reconstruction Finance Corporation, one of the petitioners above-named; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge except as to matters therein stated upon information and belief, and as to those matters he believes it to be true.

H. A. MULLIGAN.

Subscribed and sworn to before me this January 22, 1934.

DAVID B. GRIFFIN,
Notary Public.

(Seal)

Filed Jan. 25, 1934. Jas. J. O'Connor, Clerk.

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147 Record Entry Showing Petition to Intervene Submitted.

(January 29, 1934.)

By leave of Court, Messrs. Fordyce, White, Mayne and Williams, enter their appearance herein as associate counsel for Bankers Trust Co. Exhibit A to petition of Bankers Trust Co., et al., trustees, etc. for leave to intervene etc., as well as opposition of trustees to said petition filed by leave. Such petition of Bankers Trust Co., et al., trustees, etc. for leave to intervene argued and submitted.

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148 Record Entry of Filing of Memoranda Opinions.

(March 24, 1934.)

Memoranda of oral opinions of the Court in the matter of petitions for leave to intervene of Irving Trust Company, United States of America, Bankers Trust Company, et al., and John W. Stedman, et al., filed.

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149 Record Entry of Filing of Orders Permitting Intervention.

(April 5, 1934.)

Separate orders (3) filed granting United States of America and Reconstruction Finance Corporation leave to intervene specially in this cause. Order denying without prejudice petition of John W. Stedman, et al., etc., leave to intervene herein, filed.

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150 Order Permitting Intervention of the Reconstruction Finance Corporation.

This cause this day having come on to be heard on the joint petition of the Reconstruction Finance Corporation and United States of America for leave to intervene herein, and it appearing to the Court that all parties of record have been duly notified of the hearing, and for good cause shown, the Court being fully advised in the premises, finds that the prayer of said petition for a general intervention should be denied; that the prayer of said petition for a special intervention should be granted; it is, therefore,

151 Ordered, Adjudged and Decreed

That said Reconstruction Finance Corporation is hereby given leave to intervene especially to protect and fully conserve, its rights mentioned in its petition and is hereby admitted and constituted a special party to this cause, with the right to have notice served on its counsel or any of them, to file motions, answers, pleadings, and other papers, in said matters to be heard by testimony and by argument, and to take such other steps and proceedings in this cause as it may deem proper to protect and conserve its said rights, interests and property in the estate of the Debtor or Debtors herein; provided, however, that the Court reserves the right to enter orders pursuant to petitions or motions of the Trustees herein without notice thereof to any party or parties, where, in the judgment of the Court, such notice is not necessary to protect the interests of any such party not served with notice.

It Is Further Ordered that the Trustees of the Missouri Pacific Railroad Company are granted twenty days from March 21, 1934, in which to answer said intervening petition.

C. B. FARIS,
U. S. District Judge.

Filed April 5th, 1934.

Filed Apr. 5, 1934. Jas. J. O'Connor, Clerk.

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154 Order Permitting Special Intervention on Petition of Bankers Trust Company and William H. Bixby, Trustees of St. Louis, Iron Mountain & Southern Railway Company River and Gulf Division, First Mortgage.

Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain and Southern Railway Company River and Gulf Division First Mortgage due May 1, 1933, having, on or about December 12, 1933, duly served on all the parties to this proceeding their petition, dated December 4, 1933, for leave to intervene and for the segregation, sequestering and impounding of the tolls, income,
155 rents, revenues, issues and profits of the property subject to said Mortgage, and for other relief, together with a notice of motion on said petition returnable December 27, 1933, and the hearing on said motion having been duly adjourned to the 29th day of January, 1934, and the Court having made an order herein providing that all orders, if any, made on such petition be made and take effect as of the 1st day of January, 1934, and the said petition having duly come on to be heard on the 29th day of January, 1934, and the Court having heard the arguments of counsel and being fully advised in the premises:

It Is Ordered, Adjudged and Decreed, as follows:

That the petition of said Trustees of said Mortgage to intervene generally at this time is denied.

It Is Further Ordered that said Trustees of said Mortgage are hereby given leave to intervene specially to protect and fully conserve their rights mentioned in their petition, and are hereby admitted and constituted a special party to this cause, with the right to have notice served on their counsel, Messrs. Alexander & Green, 120 Broadway, New York, New York, and Messrs. Fordyce, White, Mayne & Williams, 506 Olive Street, St. Louis, Missouri, or any of them, to file motions, answers and pleadings, and other papers, in said matters, to be heard by testimony and by argument, and take such other steps and proceedings in this cause as they may deem proper to protect and conserve their rights, interest and property in the estate of the Debtor or Debtors herein; provided, however, that the Court reserves the right to enter orders pursuant to petitions or motions of the Trus-
156 tees herein, without notice thereof, to any party or parties, where, in the judgment of the Court, such notice is not necessary to protect the interest of any such party not served with notice.

It Is Further Ordered that the Trustees of Missouri Pacific Railroad Company, Debtor, the Trustees of the First and Refunding Mortgage of Missouri Pacific Railroad Company and Reconstruction Finance Corporation, shall have twenty days from March 21, 1934, in which to answer the petition of Bankers Trust Company and William H. Bixby, as such Trustees, as to the issues not disposed of in this order.

C. B. FARIS,
United States District Judge.

Filed April 5, 1934.

Filed Apr. 5, 1934. Jas. J. O'Connor, Clerk.

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158 (Order Granting Leave to United States of America to Intervene.)

On this date, this cause coming on to be heard upon the intervening petition of the United States, represented by the Attorney-General and the United States District Attorney, and it appearing to the Court that the Commissioner of Internal Revenue asserts that the United States has a lien for taxes against the Missouri Pacific Railroad Company, Debtor, and certain of its subsidiaries prior to the lien for taxes of the different States through which the said railroads are operated and prior to the lien asserted by the Trus-
159 tees of the mortgages upon the property of said Debtors and that the United States has a pecuniary interest in this cause:

It Is Ordered, Adjudged and Decreed by the Court:

That the petition of the United States to intervene generally in this cause is denied; but that the United States be, and it is hereby permitted, to intervene specially in this cause, in order to assert its rights herein and to defend against the rights asserted by Debtors and the Trustees of their mortgages insofar as same shall affect the rights of the Government; and

It Is Further Ordered that the Trustees of the Missouri Pacific Railroad Company and the other Debtors in this cause shall have twenty days from March 21, 1934, in which to answer said intervening petition.

C. B. FARIS,
United States District Judge.

Filed April 5th, 1934.

Filed Apr. 5, 1934. Jas. J. O'Connor, Clerk.

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162 (Record Entry of Filing of Answer of Reconstruction Finance Corporation to Petition of Bankers Trust Company, et al., for Leave to Intervene.)

April 9, 1934.

Answer of Reconstruction Finance Corporation, Intervener, to petition of Bankers Trust Company, et al., etc., for leave to intervene, filed.

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163 (Answer of Reconstruction Finance Corporation to Petition of Bankers Trust Company, et al., for Leave to Intervene.)

And now come Reconstruction Finance Corporation, Intervener herein, and for answer to the petition filed by Bankers Trust Company and William H. Bixby as Trustees of the St. Louis, Iron Mountain and Southern Railway Company, River and Gulf Division, First Mortgage, due May 1, 1933, for leave to intervene, etc., dated December 4, 1933 and presented to this Court on December 27, 1933, say:

1. It admits the allegations of paragraphs I, II, III, IV, V and VI of said petition.

164 2. For lack of sufficient information it is unable either to admit or deny the allegation contained in the first sentence of paragraph VII of said petition, and demands strict proof thereof. It denies the allegation contained in the second sentence of paragraph VII.

3. For lack of sufficient information, it is unable either to admit or deny the allegations of paragraph VIII of said petition, and demands strict proof thereof.

4. It admits the allegations of paragraphs IX and X of said petition.

5. It admits the allegations of paragraph XI of said petition, but without prejudice to any right which it may have to controvert any allegation in petitions numbered, respectively, 1, 15, 57 and 86, or to appeal from, or move to vacate or modify anything contained in, orders numbered respectively 1, 15, 40, 57 and 86.

6. For lack of sufficient information, it is unable either to admit or deny the allegations of paragraphs XII and XIII of said petition, and demands strict proof thereof.

Further answering, it states:

7. Further answering, your intervener states that the primary purpose of Section 77 of Chapter VIII of the Acts of

Congress relating to bankruptcy, under which the Court acquired jurisdiction in this cause, is to enable the debtor to effect a plan of reorganization; that Petition No. 1 contained such allegation and that the Court by Order No. 1 so found; that the impounding, segregation, sequestration and paying over to the Trustees of the St. Louis, Iron Mountain
165 and Southern Railway Company, River and Gulf Divisions, First Mortgage, from time to time, as prayed for in said petition, of said rents, issues, profits, tolls and other income derived or to be derived from time to time from the operation of the property alleged to be subject to the lien of the aforesaid First Mortgage would hinder, impede, obstruct and delay the orderly preparation, promulgation and consummation of a plan of reorganization for the debtor; and that said petition is in effect the commencement of or continuance of a judicial proceeding to enforce the alleged lien of said First Mortgage against the estate of the debtor in a manner contrary to and in conflict with Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy.

8. It alleges that the 73rd Congress, among other measures dealing with the emergency then and now existing, adopted Public Resolution No. 10 (a joint resolution to secure uniform value to the coins and currencies of the United States) as follows:

"Whereas the holding of or dealing in gold affect the public interest, and are therefore subject to proper regulation and restriction; and

"Whereas the existing emergency has disclosed that provisions of obligations which purport to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby, obstruct the power of the Congress to regulate the value of the money of the United States, and are inconsistent with the declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in the payment of debts. Now, therefore, be it

166 "Resolved by the Senate and House of Representatives of the United States of America in Congress Assembled, That (a) every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the

United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. Any such provision contained in any law authorizing obligations to be issued by or under authority of the United States, is hereby repealed, but the repeal of any such provision shall not invalidate any other provision or authority contained in such law.

"(b) As used in this resolution, the term 'obligation' means an obligation (including every obligation of and to the United States, excepting currency) payable in money of the United States; and the term 'coin or currency' means coin or currency of the United States, including Federal Reserve notes and circulating notes of Federal Reserve Banks and national banking associations.

"Sec. 2. The last sentence of paragraph (1) of subsection (b) of section 43 of the Act entitled 'An Act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness,
to provide for the orderly liquidation of joint-stock
167 land banks, and for other purposes', approved May 12, 1933, is amended to read as follows:

" 'All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations) heretofore or hereafter coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues, except that gold coins, when below the standard weight and limit of tolerance provided by law for the single piece, shall be legal tender only at valuation in proportion to their actual weight.' "

that said resolution, which was approved June 5, 1933, is in full force and effect, and it not only prohibits payment of the sums secured by the aforesaid mortgage in gold coin or in other than lawful money of the United States but expressly declares to be against public policy the clause or provision relied upon by the Trustees of the aforesaid mortgage as authorizing and requiring payment "in gold coin of the

United States of the standard of weight and fineness prevailing on May 1, 1903".

9. It alleges that the 73d Congress, among other measures dealing with the emergency then and now existing, enacted Public Act No. 1, which was approved March 9, 1933, and, except as may be amended by the Act of Congress referred to in paragraph "10" hereof, is in full force and effect; that said Act authorized the President of the United States to regulate and prohibit, among other things, transactions in foreign exchange, transfers of credit between or payments by banking institutions as defined by the President, and the export, hoarding, melting or earmarking of gold or silver coin or bullion or currency, and con-
168 firmed such actions theretofore taken by the President; and authorized the Secretary of the Treasury to require any or all persons to deliver to the Treasurer of the United States any or all gold coin, gold bullion and gold certificates owned by such persons; that consonant with and pursuant to said Act Orders were issued by the President on March 6, March 10, April 5, April 20, August 28, August 29, October 25, 1933, and January 12, 1934, and by the Secretary of the Treasury on December 28, 1933, January 11 and January 15, 1934, regulating and prohibiting the ownership, export, hoarding, melting or earmarking of gold coin or bullion or currency; that such orders prevent, and were intended to prevent, the payment of the sums secured by the aforesaid mortgage "in gold coin of the United States of the standard of weight and fineness prevailing on May 1, 1903".

10. It alleges that the 73rd Congress enacted the Gold Reserve Act of 1934, which was approved January 30, 1934, and is in full force and effect; that said Act prohibits the coinage of gold and the payment or delivery of gold coin by the United States, and requires that all gold coin of the United States be withdrawn from circulation; that said Act requires the Secretary of the Treasury, with the approval of the President, to prescribe the conditions under which gold may be acquired and held, transported, melted or treated, imported, exported, or earmarked; that pursuant to said Act, the Secretary of the Treasury, with the approval of the President, on January 30 and 31, 1934, issued provisional regulations prescribing the conditions under which such acquisition and disposition of gold might be effected; that said Act and said regulations prohibit payment of the
169 sums secured by the aforesaid mortgage "in gold coin of the United States of the standard of weight and fineness prevailing on May 1, 1903".

11. In order to effect an orderly preparation and consummation of a plan of reorganization for the debtor under Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, which is the primary purpose of said Section 77, under which these proceedings are now pending, it is necessary that the court determine without delay whether or not the debt alleged to be owing on account of the principal of the bonds and the interest now or hereafter due, secured by the aforesaid mortgage and on account of the expenses of the Trustees and of the compensation of the aforesaid petitioner and for the services of all counsel, agents and employees properly engaged and employed by them, may be satisfied by the payment of the face amount of said debt in lawful money of the United States, since until this determination is made, the nature and extent of the claims and interests of the various creditors cannot be definitely ascertained.

Wherefore, in answer to the prayers of said petition of the aforesaid Trustees, your intervener prays as follows:

1. That prayers Nos. 2, 3, 4, 5, 6 and 7 of said petition be denied, pending full determination of the issues herein.

2. That the Court determine without delay that the debt alleged to be owing on account of the principal of the bonds and the interest now or hereafter due, secured by the aforesaid mortgage and on account of the expenses of the
170 Trustees and of the compensation of the aforesaid petitioner and for the services of all counsel, agents and employees properly engaged and employed by them, may be satisfied by the payment of the face amount of said debt in lawful money of the United States.

April 5, 1934.

RECONSTRUCTION FINANCE CORPORATION,
By Stanley Reed, General Counsel.

Max O'Rell Truitt,
Cassius M. Clay, Counsel,
Green, Henry & Remmers,
Of Counsel.

District of Columbia,
City of Washington—ss.

The undersigned, Stanley Reed, being duly sworn, deposes and says that he is General Counsel and likewise an officer of the Reconstruction Finance Corporation, intervener above named; that as such officer he is authorized to execute

the foregoing answer; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge except as to matters therein stated upon information and belief, and as to those matters he believes it to be true.

STANLEY REED.

Subscribed and sworn to before me this April 5th, 1934.

GEORGE C. LYNCH,
Notary Public.

(Seal)

Filed Apr. 9, 1934. Jas. J. O'Connor, Clerk.

Refiled July 9, 1934. Jas. J. O'Connor, Clerk.

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171 (Record Entry of Filing of Answer of Trustees to Intervening Petition of Bankers Trust Company, et al.)

April 10, 1934.

Answers (2) of Trustees to intervening petitions of Bankers Trust Co., et al., etc. and Irving Trust Co., etc., filed.

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172 Answer of Trustees to Intervening Petition of Bankers' Trust Company and William H. Bixby, Trustees of St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions, First Mortgage.

Come now L. W. Baldwin and Guy A. Thompson, Trustees of the Missouri Pacific Railroad Company, and, for answer to the intervening petition of the Bankers' Trust Company and William H. Bixby, Trustees of St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions, First Mortgage, said Trustees:

I.

Admit the allegations in paragraphs I, II, III, IV, V, VI, VII, VIII, IX and X of said intervening petition.

173 II.

For answer to paragraph XI of said intervening petition, said Trustees admit that Orders, numbered 1, 15, 40, 57 and 86, have been entered by the Court in this proceeding, but said Trustees allege that said interveners, in claiming the benefit of said Orders, are estopped to controvert or question the validity thereof.

III.

Trustees further admit the allegations in paragraph XII of said intervening petition.

IV.

For answer to paragraph XIII of said petition, Trustees allege that they have caused to be deposited with their paying agent in the City of New York interest in full upon said Mortgage Bonds up to November 1, 1933, and that all of the holders of said bonds, who deposited their bonds and were willing to receipt for said interest payments due thereon, have been paid therefor in full.

V.

With respect to the prayer of the intervening petition that the nature, extent and character of the other property on which said mortgage is a valid and subsisting lien and the priority of said lien be determined, Trustees aver that Section 77 of the Bankruptcy Act does not contemplate that the Court shall determine such questions at this stage of the reorganization proceedings and said questions are prematurely raised and should not be considered or determined by the Court at this time.

174 VI.

With respect to the prayer of said intervening petition that the rents, issues, profits, tolls and other income accruing from the property subject to the lien of said mortgage be impounded, segregated and sequestered and paid over to said intervening petitioners, as Trustees under said mortgage, and that the Court determine the application and disposition to be made thereof by said intervening petitioners, as Trustees under said mortgage, Trustees aver that said prayer should be denied because:

(a) Section 77 of the Bankruptcy Act does not contemplate that the Court shall determine such questions at this stage of the reorganization proceedings and said questions are prematurely raised and should not be considered or determined by the Court at this time, and

(b) The granting of said prayer would constitute an enforcement of a lien upon the bankrupt estate which is in contravention of the clear intents of said Section 77, paragraph "L", of the Bankruptcy Act, and

(c) Under and by virtue of Article Ten of said Mortgage, the mortgagor was permitted to remain in possession of the tolls, earnings, rents, issues and profits until default occurred

in said Mortgage, said Article Ten of said Mortgage being as follows:

"Article Tenth.

Right of Railway Company to Possession.

Until some default shall have been made in the due and punctual payment of the interest or of the principal of the bonds hereby secured, or of some part of such interest or principal, or in the due and punctual performance and
175 observance of some covenant or condition hereof obligatory upon the Railway Company, and such default shall have continued beyond the period of grace, if any, herein provided in respect thereof, the Railway Company, its successors and assigns shall be suffered and permitted to retain actual possession of the railroads, premises and property hereby mortgaged, and to manage, operate and use the same and every part thereof, with the rights and franchises appertaining thereto, and to collect, receive and take the tolls, earnings, rents, issues, profits and other income thereof; but the Railway Company hereby covenants and agrees to first pay from such income, after paying the operating expenses of said railroads and the taxes thereon, the interest accruing and maturing upon the bonds issued hereunder; and such income, after paying the operating expenses of said railroads, shall, either before or after default, and whether said railroads are operated by the Railway Company, or by the Trustees under the power of entry hereinbefore reserved, or by a receiver or receivers appointed by any court at the instance of the Railway Company or of any creditor, stockholder or other person interested in said Company or having the right to apply for such appointment, be primarily pledged and applied to the payment of the interest and principal of said bonds in the order of priority declared in Section 1 of Article Fifth hereof."

The Trustees present to the Court that, prior to the default of said Mortgage, to-wit, on May 1, 1933, the petition in bankruptcy was filed by the Debtor, Missouri Pacific Railroad Company, i. e., on March 31, 1933, and, prior to the filing of the petition in bankruptcy, the said Trustees
176 had not attached or sequestered or attempted to attach or sequester the tolls, rents, earnings, issues and profits and other income accruing upon said mortgaged property, by reason of which, the Trustees appointed by this Court succeeded to the legal title of said rents and profits and other income from said premises, and said Bankers' Trust Company and William H. Bixby, therefore, are not entitled

to segregate or sequester the same for the benefit of said Trustees of said Mortgage.

Further, Trustees aver that they are so keeping their books of account as to show all tolls, incomes, rents, revenues, issues and profits derived from the property of said Debtor which is subject to the lien of said mortgage and that they will continue to so keep their books of account during the pendency of this proceeding.

VII.

With respect to the prayer of said intervening petition that the sum secured by said mortgage with interest thereon be determined to be payable in gold coin of the United States of the standard and weight and fineness prevailing on May 1, 1903, as provided in said mortgage and in the bonds secured thereby, Trustees aver that said provisions of said mortgage and said bonds are void and of no effect for the reason that the Congress of the United States, under Joint Resolution of the House and Senate of the United States, adopted June 5, 1933, provided that promises to pay dollars in gold coin could be satisfied by the payment of dollars in any other form, and said Joint Resolution set aside and rendered nugatory said provisions of said Mortgage and bonds, and, to enforce said provisions against the Debtor or
177 Trustees in this proceeding would result in increasing the amount due upon the principal of said bonds over the legal amount which the holders of said bonds are entitled to recover.

Trustees further aver that, in order to prevent delay, in the presentation to, and promulgation by, the Interstate Commerce Commission of a plan for the reorganization of the capital structure of the Debtor in this proceeding, the Court should speedily pass upon said issue and, further, Trustees state that, by reason of the provisions of the Federal Equity Rule No. 29, said issue of law raised by the interveners in this case, going to the whole or a material part of the cause of action stated in the intervening petition, may be called up and disposed of before final hearing at the discretion of the Court, and said issues should be speedily decided by the Court so that the reorganization of the Debtor's corporate structure shall not be unnecessarily delayed.

Wherefore, Trustees pray that said issue shall be passed upon without delay by the Court and that the Court shall order and decree that, under and by virtue of said Joint Resolution of the Congress of the United States of June 5, 1933, the so-called Gold Clause of said Mortgage, set up in

said intervening petition by said Trustees, shall be adjudged null and void.

Respectfully submitted,

L. W. BALDWIN,
GUY A. THOMPSON,
Trustees,

By Edw. J. White,
Counsel for Trustees.

Filed Apr. 10, 1934. Jas. J. O'Connor, Clerk.

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180 (Petition of Intervention of United States of America.)

To the Honorable, the Judges of the District Court of the United States for the Eastern District of Missouri:

Comes now your petitioner, the United States of America, by Louis H. Breuer, United States Attorney for the Eastern District of Missouri, and respectfully shows that:

I. The United States Commissioner of Internal Revenue has authorized and directed this petition to be filed on behalf of the United States.

II. At all times hereinafter mentioned your petition-
181 er, the United States of America, was, and now is, a corporation sovereign and body politic.

III. On March 31, 1933, the Missouri Pacific Railroad Company (hereinafter referred to as the Debtor) filed a petition in this Honorable Court, whereby the Debtor set forth that it was unable to meet its debts as they mature and sought to effect a plan of reorganization pursuant to Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, and prayed that an order be entered approving the petition as properly filed under said Section 77.

IV. On March 31, 1933, an order was entered in this proceeding by which the petition was approved as properly filed under said Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, and requiring the Debtor to file with the Clerk of this Court, within forty days after March 31, 1933, a statement of the assets and liabilities of the Debtor as of the close of business on March 31, 1933.

V. On May 15, 1933, the Debtor filed with the Clerk of this Court a statement of its assets and liabilities as of the

close of business on March 31, 1933, which statement sets forth to this Court that the Debtor had a tax liability of $3,433,324.83 as of that date.

VI. Your petitioner is interested in the above-entitled proceeding for the reason that on or about June 1, 1933, the Commissioner of Internal Revenue made an assessment of $3,893,531.59 against the Debtor for unpaid income taxes aggregating $2,801,051.60 for the calendar years 1920, 1924, 1925, 1926, 1928, and 1929, together with interest accrued thereon in the amount of $1,092,479.99; on or about
182 March 15, 1922, the Commissioner of Internal Revenue made an assessment of $264,854.14 against the Debtor for unpaid income taxes for the calendar year 1921, of which amount $62,572.37 remains unpaid; on or about June 1, 1933, the Commissioner of Internal Revenue made an assessment of $12,667.64 against the Debtor for unpaid income taxes for the calendar year 1930 in the amount of $11,182.65 and interest accrued thereon in the amount of $1,484.99. The aggregate amount of unpaid income taxes and interest assessed against the Debtor is $3,968,771.60, for which claims were duly filed, but said taxes and interest remain unpaid, together with interest accrued thereon.

VII. Your petitioner is advised and, therefore, charges, that under the provisions of Subdivision (c) of Section 205, Title 11, United States Code, creditors who desire to be heard on questions other than the permanent appointment of any trustee or trustees, or the proposed recommendation, approval, or confirmation of any plan of reorganization, shall file their petition for leave to intervene.

VIII. Your petitioner is informed and believes and, therefore, alleges, that numerous questions of vital and far-reaching importance will be raised in the above-entitled proceedings which may affect the tax claim of the United States of America.

Wherefore, your petitioner prays this Honorable Court to enter an order granting leave to intervene in this proceeding with the right to receive notice of hearings, to file motions, pleadings, and other papers, to be heard by testimony and/or by argument, and to take such other steps and pro-
183 ceedings in this cause as the petitioner may deem proper; and for such other further and different re-

lief as the nature and circumstances of this proceeding may require and as to the Court shall seem proper.

Dated this 11 day of April, 1934.

CLAUDE M. CROOKS,
Asst. United States Attorney for the
Eastern District of Missouri.

Filed Apr. 11, 1934. Jas. J. O'Connor, Clerk.

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184 (Answer of Trustees to Intervening Petition of United States of America.)

Come now the Trustees, L. W. Baldwin and Guy A. Thompson, and, for answer to the intervening petition of the United States Government, through the Commissioner of Internal Revenue, said Trustees respectfully present to the Court:

That claims have been filed by the Commissioner of Internal Revenue with the Special Master appointed by the Court in this cause, Marion C. Early, for income taxes due the United States, prior to the appointment of said Trustees, against certain of the Debtors in this cause.

That said claims, in due course, will be passed upon by said Special Master and the amount of prior income taxes due by said Debtors will be determined; but, until the determination by said Special Master of the amount of said
185 claims, said Trustees state that the intervention of the United States, through the Commissioner of Internal Revenue, is premature, as the nature and extent of the liens, if any, attaching thereon cannot be determined until the amount of said claims has been adjudicated by the Special Master in this cause.

Further answering, said Trustees deny that the Commissioner of Internal Revenue will be entitled to a lien upon any claim for income taxes due the United States Government against any of said Debtors prior to the lien of said Debtors' mortgages, or prior to the lien of State taxes subsequently accruing against the property of said Debtors being operated by said Trustees.

And, further answering, while the Trustees admit that the United States Government has a pecuniary interest, because of the pendency of said claims for income taxes against the Debtors, upon the issue raised by the Bankers Trust Company, Trustee under the St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions, First

Mortgage, that the bondholders, secured by said mortgage are entitled to be paid in gold coin of the United States of the weight and fineness obtaining May 1st, 1903, such Trustees deny that the United States, at this time, is entitled to intervene upon any other issue in this cause.

L. W. BALDWIN,
GUY A. THOMPSON,
Trustees.

By Edw. J. White,
Counsel for Trustees.

Filed Apr. 11, 1934. Jas. J. O'Connor, Clerk.

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188 Motion of Trustees for Advice Concerning Semi-Annual Interest Payments on Underlying Mortgages, and Interest and Principal Payments on Plaza-Olive Building Mortgage and Equipment Trust, Series F, and Interest Payments on Equipment Trusts, Series B, C and F, Totaling, Principal and Interest, $1,611,223.33, Due May 1, 1934, and Interest Due December 1, 1933, Upon Central Branch-Union Pacific Railway Company First Mortgage Four Per Cent Bonds, in the Sum of $32,560.00.

Come now L. W. Baldwin and Guy A. Thompson, Trustees in the above-entitled cause, and present to the Court:

189 That on May 1, 1933, semi-annual interest upon the following underlying mortgages and equipment trusts of Debtor, Missouri Pacific Railroad, will be due and payable, to-wit:

Third Mortgage, Missouri Pacific Railway	$ 76,560.00
Real Est. Secy. Mtge., Pacific Railroad of Missouri	19,975.00
First Mortgage, Plaza-Olive Building	3,932.50
River and Gulf Divisions, First Mortgage	690,960.00
Equipment Trust, Series B	36,575.00
Equipment Trust, Series C	39,000.00
Equipment Trust, Series F	147,262.50
	$1,014,265.00

That, in addition to said semi-annual interest payments upon said underlying mortgages and said equipment trusts

above described, there is a principal payment due May 1, 1934, upon Missouri Pacific Equipment Trust Series F,

in the sum of.....$595,000.00
and a principal payment upon the Plaza-Olive Building Mortgage in the sum of.... 1,958.33

making total principal and interest payments due May 1, 1934, of $1,611,223.33, and also interest in the sum of $32,560.-00, due December 1, 1933, upon the First Mortgage 4% Bonds of the Central Branch-Union Pacific Railway Company.

That heretofore, on Motion No. 14 herein of the Debtor, Missouri Pacific Railroad Company, the Court entered its Order No. 14, directing the payment of the interest due
190 on May 1, 1933, on said Missouri Pacific Railway Third Mortgage, and thereafter on Trustees' Motion No. 106, herein, the Court entered its Order No. 106 directing the payment of the interest due on November 1, 1933, on said Third Mortgage and that pursuant to said Orders of Court said interest was paid. Said motions and each of them and the averments thereof are by this reference thereto incorporated in and made a part hereof.

That heretofore on Motion No. 16 of Debtor, Missouri Pacific Railroad Company, the Court entered its Order No. 16 directing the payment of the interest due on May 1, 1933, on said Real Estate Security Mortgage, Pacific Railway of Missouri, and thereafter on Trustees' Motion No. 105 herein, the Court entered its Order No. 105, directing the payment of the interest on said Real Estate Security Mortgage due November 1, 1933, and that pursuant to said Orders of Court said interest was paid. Said motions and each of them and the averments thereof are by this reference thereto incorporated in and made a part hereof.

That heretofore on Motion No. 17 of Debtor, Missouri Pacific Railroad Company, the Court entered its Order No. 17 directing the monthly payments in acordance with the requirements of the Deed of Trust on the Plaza-Olive Building set forth in said Motion No. 17 and that pursuant to said Order of Court said monthly payments have been made. Said Motion and the averments thereof are by this reference thereto incorporated in and made a part hereof.

That heretofore on Motion No. 15 of the Debtor, Missouri Pacific Railroad Company, the Court entered its Order No. 15 directing the payments of interest due on May 1,
191 1933, on said River and Gulf Division First Mortgage and thereafter on Trustees' Motion No. 86, the Court

entered its Order No. 86 directing the payment of interest due November 1, 1933, on said River and Gulf Divisions First Mortgage Bonds at 4 per cent per annum, provided said sum should be received by holders of said bonds in full for all interest due upon said bonds up to November 1, 1933, and pursuant to said Orders of Court said interest was paid. Said Motions and each of them and the averments thereof are by this reference thereto incorporated in and made a part hereof.

That heretofore on Motion No. 12 of Debtor, Missouri Pacific Railroad Company, the Court entered its Order No. 12, directing the payment of the interest on Equipment Trust Certificates, Series B, C and F due May 1, 1933, and thereafter on Trustees' Motion No. 103 herein, the Court entered its Order No. 103, directing the payment of the interest due on said Equipment Trusts, Series B and C due November 1, 1933, and on Trustees' Motion No. 104, the Court entered its order No. 104 directing the payment of the interest on Equipment Trust, Series F, due November 1, 1933, and on Trustees' Petition No. 135 the Court, by its Order No. 135, directed the payment of accrued principal of said Equipment Trust, Series F. That pursuant to said Orders of Court said interest and said principal were paid. Said Motions and each of them and the averments thereof are by this reference thereto incorporated in and made a part hereof.

That under Order No. 25, entered by this Court on May 27, 1933, on Trustees' Petition No. 25, the said semi-annual interest due June 1, 1933, in the sum of $32,560.00, up-
192 on the Central Branch-Union Pacific Railway Company First Mortgage 4% Bonds was ordered paid; but the semi-annual interest due December 1, 1933, upon the Central Branch-Union Pacific Railway Company First Mortgage 4% Bonds was not paid by said Trustees, as said Trustees were having a study of the earnings of the property made prior to, and at, the time when said interest payment matured.

That as set forth in Motion No. 15, filed herein May 4, 1933, the $34,548,000.00, face value, St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions, First Mortgage 4% Bonds matured May 1, 1933.

That the mortgage securing said bonds is a first lien upon the property described in said motion, including the lines of railroad therein described, together with said equipment and collateral pledged as security thereunder.

That said mortgage is a first lien upon 781.47 miles of railroad, together with the mortgaged equipment and securities

in said motion set out, and the semi-annual interest, in the sum of $690,960.00 is due upon said bonds May 1, 1934.

That, as Trustees are informed and believe, there is a valuable equity in the property covered by said underlying mortgages and said equipment trusts which should be preserved for the benefit of the junior lien holders and the general creditors of the Debtors herein.

That Trustees have caused studies to be made of the earnings of the properties covered by the aforesaid underlying mortgages and all of said properties have earned the
193 interest due thereon, and that said interest is not needed to pay the cost of maintenance or operation of or for any improvements and betterments of the Debtor, Missouri Pacific Railroad Company.

That upon all of the equipment represented by said equipment trusts, 25%, in cash, of the total value of said equipment, was paid at the date of the execution of the leases to the Debtors; and, as Trustees are informed and believe, there is a valuable equity in said equipment, and all of said equipment is necessary to the lines of railroad being operated by said Trustees.

That four annual principal payments upon Equipment Trust, Series F, have heretofore been made, and the semi-annual interest payment maturing upon said Equipment Trust since the appointment of Trustees, in the sum of $160,650.00, has been made by said Trustees under previous order entered by this Court, all as aforesaid.

That the semi-annual interest, due May 1, 1933, and November 1, 1933, upon the River and Gulf Divisions First Mortgage 4% Bonds, of the St. Louis, Iron Mountain & Southern Railway Company, in the sum of $690,960.00 each date, was, as aforesaid, authorized by the Court and paid by the Trustees upon the condition that the interest due upon said bonds at the rate of four per cent should be received by the holders of said bonds in full of all interest due upon said bonds prior to May 1 and November 1, 1933; and all but a negligible portion of said interest payments upon said maturing coupons was accepted by said bondholders upon said condition.

That said underlying mortgages and equipment trusts bear the following rates of interest:

194 St. L. I. M. & S. Ry. Co. River and Gulf Divisions Bonds . . .. 4 %
Central Branch-Union Pacific Ry. Co. Bonds .... 4 %

Real Est. Security Mtge., Pacific R. R. of Missouri, Bonds	5 %
Plaza-Olive Building Bonds	6 %
Third Mortgage, Missouri Pacific Railway Company Bonds	4 %
Equipment Trust, Series B	5½%
Equipment Trust, Series C	5 %
Equipment Trust, Series F	4½%

That holders of Missouri Pacific First and Refunding Mortgage Bonds, aggregating over $200,000,000.00, have a lien junior to the lien of the mortgages above described, and the Trustees of said First and Refunding Mortgage Bonds and the Bondholders' Committee, representing said bondholders, have approved the payment of said semi-annual interest due December 1, 1933, upon said Central Branch-Union Pacific 4% Bonds, and the semi-annual interest payments and the principal payments due May 1, 1934, in the total sum of $1,611,223.33.

That Trustees are provided with funds sufficient to meet said interest and principal payments upon said underlying mortgage bonds, the said Plaza-Olive Building bonds and said equipment trusts, and that said funds are not needed for maintenance and operation or for betterments and improvements, but because of the fact that question has been raised by some of the creditors of said Debtors as to the propriety of making said principal and interest payments due May 1, 1934, and the $32,500 interest due December 1, 1933, on said Central Branch-Union Pacific First Mortgage 4%
195 Bonds, Trustees submit the above facts to the Court and pray that its order and judgment be entered herein, instructing said Trustees, whether or not said principal and interest payments upon said above-listed securities should be paid.

Said Trustees further pray that an order may be entered herein ordering all creditors of the Debtors and the subsidiary Debtors, and all other interested persons or parties to appear before the Court at a time and place to be fixed by the Court, to show cause why an order should not be entered herein, determining whether or not said principal and interest payments aforesaid, and said $32,500 interest due December 1, 1933, on said Central Branch-Union Pacific First Mortgage 4% Bonds should not be paid by the Trustees, when and where said parties may be heard, if so advised.

L. W. BALDWIN,
GUY A. THOMPSON.

Edw. J. White,
Counsel for Trustees.

196 United States of America,
Eastern Judicial District of Missouri,
City of St. Louis, Missouri—ss.

L. W. Baldwin and Guy A. Thompson, being duly sworn, upon their oaths severally say that they have read the above and foregoing petition, and that the facts therein stated are true, as they verily believe.

L. W. BALDWIN,
GUY A. THOMPSON.

Subscribed and sworn to before me this 12th day of April, 1934.

My commission expires June 26, 1937.

(Seal)

GEO. W. COLLINS,
Notary Public, City of St. Louis, Mo.

Filed Apr. 16, 1934. Jas. J. O'Connor, Clerk.

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200 (Order Directing Creditors, etc., to Show Cause Why Interest Should Not Be Paid.)

Upon the petition of L. W. Baldwin and Guy A. Thompson, Trustees for the Debtors in the above-entitled proceeding, for advice respecting interest and principal payment due May 1, 1934, upon the following securities of Debtor, Missouri Pacific Railroad Company:

201 Interest:

Third Mortgage, Missouri Pacific Railway	$ 76,560.00
Real Est. Secy. Mtge., Pacific Railroad of Missouri	19,975.00
First Mortgage, Plaza-Olive Building	3,932.50
River and Gulf Divisions, First Mortgage	690,960.00
Equipment Trust, Series B	36,575.00
Equipment Trust, Series C	39,000.00
Equipment Trust, Series F	147,262.50
	$1,014,265.00

Principal:

Plaza-Olive Building Mortgage	$ 1,958.33
Equipment Trust, Series F	595,000.00
	$ 596,958.33
Total, Principal and Interest due May 1, 1934	$ 1,611,223.33

also the semi-annual interest payment, due December 1, 1933, on the Central Branch-Union Pacific Railway Company First Mortgage 4% Bonds, in the sum of $32,560.00, and the Court being duly advised in the premises, it is, on motion of Edward J. White, Counsel for said Trustees,

Ordered that all creditors of the Debtors herein, and all other interested persons, firms and corporations show cause, if any they can, before me at a hearing to be held in the Court Room of the United States District Court, Custom House Building, St. Louis, Missouri, on the 4th day of May, 1934, at ten o'clock in the forenoon, or as soon thereafter as Counsel can be heard:

202 Why an order should not be entered herein authorizing the semi-annual interest payments due May 1, 1934, upon the following securities of the Debtor, Missouri Pacific Railroad Company:

Third Mortgage, Missouri Pacific Railway...$	76,560.00
Real Est. Secy. Mtge., Pacific Railroad of Missouri	19,975.00
First Mortgage, Plaza-Olive Building.....	3,932.50
River and Gulf Divisions, First Mortgage....	690,960.00
Equipment Trust, Series B	36,575.00
Equipment Trust, Series C	39,000.00
Equipment Trust, Series F	147,262.50
	$1,014,265.00
and the semi-annual interest payment, due December 1, 1933, on the Central Branch-Union Pacific Railway Company First Mortgage 4% Bonds, in the sum of.....$	32,560.00
and the following principal payments due May 1, 1934:	
Plaza-Olive Building Mortgage .....$	1,958.33
Equipment Trust, Series F	595,000.00
$	596,958.33

It Is Further Ordered that due and timely service of this Order to show cause be made by

(a) Publishing a notice of said hearing, once a week, for two consecutive weeks in one daily newspaper, published and in general circulation, in each of the Cities of St. Louis and Kansas City, Missouri, Omaha, Nebraska, Houston,
203 Texas, Little Rock, Arkansas, New Orleans, Louisiana, Cleveland, Ohio, and New York, New York; and

(b) By mailing a copy of said notice to the respective Trustees of deeds of trust, trust indentures, mortgages, equipment trusts, agreements or pledges of collateral securing bonds, funded obligations or equipment trust certificates of the respective Debtors, and to the Reconstruction Finance Corporation and the Railroad Credit Corporation, and to the Chairman of all Bondholders Committees and Counsel for such Committees and the Collector of Internal Revenue of the United States.

C. B. FARIS,
United States District Judge.

Dated April 14, 1934.

Filed Apr. 16, 1934. Jas. J. O'Connor, Clerk.

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204 (Record Entry of Filing of Answer of United States of America to Petition of Bankers Trust Company, et al., for Leave to Intervene.)

April 28, 1934.

Answer of the Intervener, United States of America, to petition of Bankers Trust Company and William H. Bixby, Trustees, etc., filed by leave.

205 (Answer of United States of America to Petition of Bankers Trust Company, et al., for Leave to Intervene.)

Comes Now the United States of America by Angus D. MacLean, Assistant Solicitor General, and Harry C. Blanton, United States Attorney for the Eastern District of Missouri, acting under the direction of the Attorney General, having secured permission of the Court by Order of April 5, 1934, to intervene specially in this cause in order to assert its rights therein and to defend against the rights asserted by Debtor and the Trustees of their mortgage in so far as same shall affect the rights of the Government of the United States, for answer to the petition filed by Bankers
206 Trust Company and William H. Bixby, as Trustees, of the St. Louis, Iron Mountain and Southern Railway Company, River and Gulf Divisions, First Mortgage, due May 1, 1933, for leave to intervene, etc., dated December 4, 1933, and presented to this Court on December 27, 1933, says:

1. It admits the allegations contained in paragraphs I, II, III, IV, V and VI of said petition.

2. As to the allegations contained in the first sentence of paragraph VII of said petition, it avers that it has no knowledge or information sufficient to form a belief. It denies the allegation contained in the second sentence of paragraph VII.

3. It denies that the Trustees of the mortgage have acquired and now have a valid existing first lien as alleged in paragraph VIII of said petition. As to the other allegations contained in paragraph VIII of said petition, it avers that it has no knowledge or information sufficient to form a belief.

4. It admits the allegations contained in paragraphs IX and X of said petition.

5. It admits the allegations of paragraph XI of said petition but without prejudice to any right which it may have to controvert any allegation in petitions numbered, respectively, 1, 15, 57, and 86, or to appeal from, or move to vacate or modify anything contained in, orders numbered, respectively, 1, 15, 40, 57, and 86.

6. As to the allegations contained in paragraphs XII and XIII of said petition, it avers that it has no knowledge or information sufficient to form a belief.

7. Further answering, your intervener states that the
207 primary purpose of Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, under which the Court acquired jurisdiction in this cause, is to enable the debtor to effect a plan of reorganization; that Petition No. 1 contained such allegation and that the Court by Order No. 1 so found; that the impounding, segregation, sequestration and paying over to the Trustees of the St. Louis, Iron Mountain and Southern Railway Company, River and Gulf Divisions, First Mortgage, from time to time, as prayed for in said petition, of said rents, issues, profits, tolls and other income derived or to be derived from time to time from the operation of the property alleged to be subject to the lien of the aforesaid First Mortgage would hinder, impede, obstruct and delay the orderly preparation, promulgation and consummation of a plan of reorganization for the Debtor; and that said petition is in effect the commencement of or continuance of a judicial proceeding to enforce the alleged lien of said First Mortgage against the estate of the Debtor in a manner contrary to and in conflict with Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy.

8. It alleges that the payment of the mortgage bonds and interest in gold or in other money at its market value in gold would unlawfully deplete the assets of the Debtor to the detriment of the lawful rights, priorities and preferences of the United States as to unpaid income tax assessments against the Debtor as more particularly shown by the intervening petition of the United States heretofore filed in these proceedings.

9. It alleges that the 73d Congress, among other
208 measures dealing with the emergency then and now existing, adopted Public Resolution No. 10 (a joint resolution to secure uniform value to the coins and currencies of the United States) as follows:

"Whereas the holding of or dealing in gold affect the public interest, and are therefore subject to proper regulation and restriction; and

"Whereas the existing emergency has disclosed that provisions of obligations which purport to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby, obstruct the power of the Congress to regulate the value of the money of the United States, and are inconsistent with the declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in the payment of debts. Now, therefore, be it

"Resolved by the Senate and House of Representatives of the United States of America in Congress Assembled, That (a) every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. Any such pro-
209 vision contained in any law authorizing obligations to be issued by or under authority of the United States, is hereby repealed, but the repeal of any such provision shall not invalidate any other provision or authority contained in such law.

"(b) As used in this resolution, the term 'obligation' means an obligation (including every obligation of and to the United States, excepting currency) payable in money of the United States; and the term 'coin or currency' means coin or currency of the United States, including Federal Reserve notes and circulating notes of Federal Reserve Banks and national banking associations.

"Sec. 2. The last sentence of paragraph (1) of subsection (b) of section 43 of the Act entitled 'An Act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes', approved May 12, 1933, is amended to read as follows:

" 'All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations) heretofore or hereafter coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues, except that gold coins, when below the standard weight and limit of tolerance provided by law for the single piece, shall be legal tender only at valuation in proportion to their actual weight.' "

210 That said resolution, which was approved June 5, 1933, is in full force and effect, and it not only prohibits payment of the sums secured by the aforesaid mortgage in gold coin or in other than lawful money of the United States but expressly declares to be against public policy the clause or provision relied upon by the Trustees of the aforesaid mortgage as authorizing and requiring payment "in gold coin of the United States of the standard of weight and fineness prevailing on May 1, 1903."

10. It alleges that the 73d Congress, among other measures dealing with the emergency then and now existing, enacted Public Act No. 1, which was approved March 9, 1933, and, except as may be amended by the Act of Congress referred to in paragraph "11" hereof, is in full force and effect; that said Act authorized the President of the United States to regulate and prohibit, among other things, transactions in foreign exchange, transfers of credit between or payments by banking institutions as defined by the President, and the export, hoarding, melting or earmarking of gold or silver coin or bullion or currency, and confirmed such ac-

tions theretofore taken by the President; and authorized the Secretary of the Treasury to require any or all persons to deliver to the Treasurer of the United States any or all gold coin, gold bullion and gold certificates owned by such persons; that consonant with and pursuant to said Act orders were issued by the President on March 6, March 10, April 5, April 20, August 28, August 29, October 25, 1933, and January 12, 1934, and by the Secretary of the Treasury on December 28, 1933, January 11 and January 15, 1934,
211 regulating and prohibiting the ownership, export, hoarding, melting or earmarking of gold coin or bullion or currency; that such orders prevent, and were intended to prevent, the payment of the sums secured by the aforesaid mortgage "in gold coin of the United States of the standard of weight and fineness prevailing on May 1, 1903".

11. It alleges that the 73d Congress enacted the Gold Reserve Act of 1934, which was approved January 30, 1934, and is in full force and effect; that said Act prohibits the coinage of gold and the payment or delivery of gold coin by the United States, and requires that all gold coin of the United States be withdrawn from circulation; that said Act requires the Secretary of the Treasury, with the approval of the President, to prescribe the conditions under which gold may be acquired and held, transported, melted or treated, imported, exported, or earmarked; that pursuant to said Act, the Secretary of the Treasury with the approval of the President, on January 30 and 31, 1934, issued provisional regulations prescribing the conditions under which such acquisition and disposition of gold might be effected; that said Act and said regulations prohibit payment of the sums secured by the aforesaid mortgage "in gold coin of the United States of the standard of weight and fineness prevailing on May 1, 1903".

12. In order to effect an orderly preparation and consummation of a plan of reorganization for the debtor under Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, which is the primary purpose of said Section 77, under which these proceedings are now pend-
212 ing, it is necessary that the court determine without delay whether or not the debt alleged to be owing on account of the principal of the bonds and the interest now or hereafter due, secured by the aforesaid mortgage and on account of the expenses of the Trustees and of the compensation of the aforesaid petitioner and for the services of all counsel, agents and employees properly engaged and em-

ployed by them, may be satisfied by the payment of the face amount of said debt in lawful money of the United States, since until this determination is made, the nature and extent of the claims and interests of the various creditors cannot be definitely ascertained.

Wherefore, in answer to the prayers of said petition of the aforesaid Trustees, your intervener prays as follows:

1. That prayers Nos. 2, 3, 4, 5, 6 and 7 of said petition be denied, pending full determination of the issues herein.

2. That the Court determine without delay that the debt alleged to be owing on account of the principal of the bonds and the interest now or hereafter due, secured by the aforesaid mortgage and on account of the expenses of the Trustees and of the compensation of the aforesaid petitioner and for the services of all counsel, agents and employees properly engaged and employed by them, may be satisfied by the payment of the face amount of said debt in lawful money of the United States.

3. That the Court direct that no funds or moneys whatsoever be paid to petitioner before the rights of the
213 United States as to payment of taxes have been finally determined and adjudicated.

ANGUS D. MacLEAN,
Assistant Solicitor General.

HARRY C. BLANTON,
United States Attorney.

April ....., 1934.

United States of America,
State of Missouri,
City of St. Louis,
Eastern Division,
Eastern Judicial District—ss:

The undersigned, Harry C. Blanton, being duly sworn, deposes and says that he is United States Attorney for the Eastern District of Missouri; that as such officer he is authorized to execute the foregoing answer; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge except as to matters

therein stated upon information and belief, and as to those matters he believes it to be true.

HARRY C. BLANTON.

Subscribed and sworn to before me this April 28", 1934.

JAS. J. O'CONNOR,
(Seal) Clk. U. S. Dist. Ct. E. J. D. Mo.

Filed Apr. 28, 1934. Jas. J. O'Connor, Clerk.

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217 Record Entry of Setting Cause for Hearing on Validity of Gold Clause, etc.

(May 1, 1934.)

Hearing on impounding of income and validity of gold clause on petition of Bankers Trust Company and William H. Bixby as Trustees, Under St. Louis, Iron Mountain and Southern First Mortgage and the answers of trustees of debtor, United States of America and Reconstruction Finance Corporation set for May 11, 1934, at ten o'clock a. m.

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218 Record Entry of Postponement of Hearing on Gold Clause Validity, etc.

(May 4, 1934.)

On application of counsel, petition of Bankers Trust Company, et al., and answers filed hereto, heretofore set for May 11, 1934, passed for hearing to May 25, 1934 at ten o'clock a. m. Proof of publication of notice of hearing on motion of trustees for advice concerning interest payments on underlying mortgages, etc., as well as verified answer or return of Protective Committee for the Holders of Missouri Pacific Railroad Company First and Refunding Mortgage 5% Gold Bonds, and answer of Guaranty Trust Company of New York, et al., Trustees, under First Refunding Mortgage of Missouri Pacific Railroad Company, dated April 2, 1917, to said motion of trustees for instructions, filed by leave. Said motion of trustees for instructions argued and submitted on briefs to be hereafter presented.

219-220 (Order of Submission of Motion of Bankers Trust Company, et al., to Amend Their Petition.)

May 18, 1934.

Oral motion of Bankers Trust Company and W. H. Bixby as Trustees of St. Louis Iron Mountain and Southern Railway Co. River and Gulf Division First Mortgage for leave to amend their petition dated December 4, 1933, in certain respects set out in memorandum this day filed, argued and submitted on briefs to be hereafter presented.

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221 Answer of Guaranty Trust Company of New York and Benjamin F. Edwards, as Trustees Under the First and Refunding Mortgage of Missouri Pacific Railroad Company, Dated April 2, 1917, to Petition of Bankers Trust Company and William H. Bixby, Trustees of St. Louis Iron Mountain & Southern Railway Company, River and Gulf Divisions, First Mortgage, for Leave to Intervene, for an Order Impounding the Income Subject to the Mortgage, and for Other Relief.

222 Guaranty Trust Company of New York and Benjamin F. Edwards, as Trustees under the First and Refunding Mortgage of the Missouri Pacific Railroad Company dated April 2, 1917, by their counsel Davis Polk Wardwell Gardiner & Reed, make the following answer to the petition of Bankers Trust Company and William H. Bixby, as Trustees of The St. Louis Iron Mountain & Southern Railway Company, River and Gulf Divisions, First Mortgage, due May 1, 1933 (being Petition No. 173):

(1) They admit the allegations contained in paragraphs numbered I, II, XII and XIII.

(2) They deny that they have any knowledge or information sufficient to form a belief as to the allegations contained in paragraphs numbered III, IV, V, VI, VII, VIII, IX and X.

(3) They admit the allegations contained in paragraph numbered XI, except that they allege that the petitioners are without power or right to controvert any allegation in any such petition, or to appeal from or move to vacate or modify any such order.

(4) With respect to Prayer No. 3 of the petition, the First and Refunding Mortgage Trustees allege that any im-

pounding of the rents, issues, profits, tolls and other income accruing from time to time from the properties subject to the lien of the said River and Gulf Divisions, First Mortgage, or any segregation or sequestration thereof, would operate adversely to the interests of the debtor, of other creditors, and of the Trustees of the First and Refunding Mortgage; that the earnings of the debtor are now subject to determination under a formula which adequately provides for de-
223 termining the earnings from the properties covered by the said River and Gulf Divisions, First Mortgage; that any actual impounding, sequestration or segregation of said earnings would prevent the Trustees of the debtor from using such earnings where they are most needed in the preservation and operation of the debtor's properties, and would adversely affect and seriously hamper the development of a reorganization plan and thus would be contrary to the intent and purpose of Section 77 of the Bankruptcy Act.

(5) With respect to prayer No. 4 of the petition, the First and Refunding Mortgage Trustees allege that it is neither necessary nor important to the progress of these proceedings that there be a decision at this time upon the rights of the petitioners or the bondholders whom they represent to have such obligations as may be found owing to them paid in gold coin of the standard described in the petition, and the First and Refunding Mortgage Trustees join in the alternative of petitioners' prayer and request that any determination with respect to the right of the petitioners to payment in such gold coin be reserved without prejudice to the rights of any party; the First and Refunding Mortgage Trustees further deny that petitioners are entitled to a formal judgment or decree of this Court substantially equivalent to an action to foreclose the Mortgage, or that the amount specified in such judgment or decree be determined to bear interest at the rate of six per cent. per annum, the First and Refunding Mortgage Trustees alleging that the petitioners, if entitled to any judgment for a specific sum, are not en-
224 titled to interest on any amount specified in such judgment at a greater rate than four per cent. per annum.

Wherefore, The First and Refunding Mortgage Trustees submit their rights and the rights of the holders of the First and Refunding Mortgage Bonds to this honorable Court and

pray that such rights may be ascertained, determined and decreed.

Dated May 16th, 1934.

DAVIS POLK WARDWELL
GARDINER & REED,
Counsel for First and Refunding
Mortgage Trustees,
Office & Post Office Address,
15 Broad Street,
Borough of Manhattan,
City of New York.

State of New York,
County of New York—ss.

Arthur E. Burke, being duly sworn, deposes and says that he is an officer, to-wit, the Corporate Trust Officer of Guaranty Trust Company of New York; that he has read the foregoing answer and knows the contents thereof; that the allegations contained therein in respect to the acts of Guaranty Trust Company of New York are true to his own
225 knowledge, and that as to all other allegations contained therein he is credibly informed and believes that the same are true.

ARTHUR E. BURKE.

Subscribed and sworn to before me this 16th day of May, 1934.

(Seal)

W. J. BURNHAM,
Notary Public.

Kings Co. Clerk's No. 156, Reg. No. 6168

N. Y. Co. Clerk's No. 536, Reg. No. 6-B-288

Queens Co. Clerk's No. 436, Reg. No. 2323

Certificate filed in Westchester County

Certificate filed in Nassau County

Commission expires March 30, 1936.

No objection to the filing of this answer.

ALEXANDER & GREEN,
FORDYCE, WHITE, MAYNE
& WILLIAMS,
Counsel for Bankers Trust Co. and
Wm. H. Bixby, Trustees of River &
Gulf Mtge.

Filed May 21, 1934. Jas. J. O'Connor, Clerk.

229 (Order Denying Motion of Bankers Trust Company, et al., to Amend Their Petition.)

May 22, 1934.

Motion of Bankers Trust Co., et al., as trustees of St. Louis, Iron Mountain and Southern Railway Co., River and Gulf Division, First Mortgage, for leave to amend their bill of intervention denied for reasons assigned in oral opinion this day announced.

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230 (Record Entry of Filing of Opinion on Motion of Bankers Trust Company, et al., to Amend Their Petition.)

May 24, 1934.

Memorandum of oral opinion of the Court on motion of Bankers Trust Co., et al., trustees, etc., for leave to amend their bill of intervention, filed.

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231 (Opinion of District Court on Denial of Motion of Bankers Trust Company, et al., to Amend Their Petition.)

Faris, J.

In December, 1933, the Bankers Trust Company, and another, Trustees in a certain mortgage dated May 1, 1903, filed by leave their petition in intervention, wherein, inter alia, they pray, among other relief, this, "that the lien of the mortgage be determined to be in the sum of $34,548,000, with interest thereon from May 1, 1933, at the rate of six per cent. per annum * * * and that such sum and interest be determined to be payable in gold coin of the United States, of the standard weight and fineness prevailing on May 1, 1903."

Thereupon, and in due time, the Trustees of Debtor herein, and divers others lawfully interested in the determination of what I may call the gold clause of interveners' mortgage, filed their answers to the bill of the Trustees in the mortgage of May 1, 1903, in which they joined issue with said Trustees last-named and asked for a speedy determination of the question whether or not payment of said mortgage, under the terms thereof, should be made in gold, and, among other things, prayed, after setting up the facts, thus (I take
232 the prayer of the Trustees' answer as a type, merely, of other answers filed by other parties interested in the matter):

"With respect to the prayer of said intervening petition that the sum secured by said mortgage with interest thereon be determined to be payable in gold coin of the United States of the standard and weight and fineness prevailing on May 1, 1903, as provided in said mortgage and in the bonds secured thereby, Trustees aver that said provisions of said mortgage and said bonds are void and of no effect for the reason that the Congress of the United States, under Joint Resolution of the House and Senate of the United States, adopted June 5, 1933, provided that promises to pay dollars in gold coin could be satisfied by the payment of dollars in any other form, and said Joint Resolution set aside and rendered nugatory said provisions of said Mortgage and bonds, and, to enforce said provisions against the Debtor or Trustees in this proceeding would result in increasing the amount due upon the principal of said bonds over the legal amount which the holders of said bonds are entitled to recover.

Trustees further aver that, in order to prevent delay, in the presentation to, and promulgation by, the Interstate Commerce Commission of a plan for the reorganization of the capital structure of the Debtor in this proceeding, the Court should speedily pass upon said issue, and, further, Trustees state that, by reason of the provisions of Federal Equity Rule No. 29, said issue of law raised by the interveners in this case, going to the whole or a material part of the cause of action stated in the intervening petition, may be called up and disposed of before final hearing at the discretion of the Court, and said issues should be speedily decided by the Court so that the reorganization of the Debtor's corporate structure shall not be unnecessarily delayed.

Wherefore, Trustees pray that said issue shall be passed upon without delay by the Court and that the Court shall order and decree that, under and by virtue of said Joint Resolution of the Congress of the United States of June 5, 1933, the so-called gold clause of said mortgage, set up in said intervening petition by said Trustees, shall be adjudged null and void."

Thereafter, pursuant to authority, as is alleged, of Rule 29, of the Rules in Equity, the issue so raised by the petition of interveners, and by the above answer of the Trustees of Debtor and others, was specially set for hearing on May 11, 1934. Later, and by request and consent of counsel
233 for interveners, the matter was postponed and reset for May 25, 1934.

Thereafter, and on May 18, 1934, counsel for the interveners again came into court, at a stated session thereof and asked leave to amend their bill of intervention by presently striking therefrom, without prejudice, all reference to the gold clause in their said mortgage in which they are Trustees, as, also, their prayer of relief under such gold clause.

The Trustees of the Debtor, the United States, and others interested as creditors of Debtor, or otherwise, appeared and opposed the right of interveners to so amend their bill, save upon the condition, to which interveners refused to accede, that such amendment be with prejudice. And thus stand the facts on which the right to amend vel non, is before me.

Rule 28 of the Rules in Equity, after reciting, in effect, that before joinder of issue the right of a complainant to amend is a right as of course. This Rule then proceeds to say this:

"After pleading filed by any defendant, plaintiff may amend only by consent of the defendant, or leave of the court or judge."

In passing, however, it may be said that interveners urge that this matter has no relation to an equitable proceeding, and therefore that the rule I have just quoted does not apply. I am of opinion that interveners' learned counsel, in assuming this position, fall into serious error.

Lately, in full effect, it was held by the Supreme Court of the United States, that matters of bankruptcy are equitable in practice and procedure, and that the word "law" mentioned in Section 1 of the original Bankrupt Act refers only to criminal matters and phases (Local Loan Company vs. Hunt, decided April 30, 1934,) as witness this excerpt from the above opinion:

234 "Courts of bankruptcy are constituted by Sections 1 and 2 of the Bankruptcy Act (U. S. C. Title 11, Sections 1 and 2) and are invested 'with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings', and so forth. The words 'at law' were probably inserted to meet Clause (4) of Section 2, which empowers such courts to arraign, try and punish certain designated persons for violation of the Act (cases cited). But otherwise courts of bankruptcy are essentially courts of equity and their proceedings inherently proceedings in equity."

Obviously, the language above quoted from Rule 28, does not mean that either the defendant or the Court may arbitrarily refuse or deny permission to complainant to amend. The right, or the lack thereof, in complainant to amend is yet to be determined upon what are fairly well-settled principles of both law and equity; and it is, in my opinion, wholly germane in principle to the right of a plaintiff at law, and a complainant in equity, to dismiss or discontinue a cause of action sounding in either law or equity. This general rule is well-stated in a quotation found in the case of State Ex Rel. vs. Anderson, 269 Mo., l. c., 388, thus:

"While a plaintiff may dismiss any claim when such dismissal will not prejudicially affect the interests of defendant, he will not be permitted to dismiss, to discontinue, or to take a non-suit, when by so doing he will obtain an advantage and defendant will be prejudiced or oppressed, or deprived of any just defense."

Coming from the genus to the species, from the general to the particular, nothing is better settled than that a plaintiff may not, without his adversary's consent, dismiss his petition, bill or claim, after joinder of issue, when in such joinder defendant has set up a counter-claim at either law or in equity. So universal is the rule above announced, that citations of cases would be both useless and a burden to the page on which they were written.

Here, interveners ask, in effect, that the Court decree that their mortgage be paid in gold coin of the weight
235 and fineness current and prevailing on May 1, 1903, or in lieu thereof, in effect, that the decree finally entered, order that such mortgage be satisfied only upon payment of such sum in current money as shall equal the value now of $34,548,000 gold dollars, as of May 1, 1903.

Defendants, Trustees of the Debtor, and others, come and oppose this prayed decree, and ask as relief from the gold clause of the mortgage in controversy, that such clause be held null and void and cancellation thereof be adjudged by this Court under the practice of Rule 29, supra.

Is such relief as pleaded and prayed for by defendants, Debtor, and others, sufficient, to prevent an amendment, over defendants' objections, which, for the present totally withdraws the issue of the validity vel non, of the gold clause of the mortgage, from this case?

I am of the opinion that it is. The cases below cited seem to me to bear out the conclusion I have reached. (Detroit

vs. Detroit Railway Company, 55 Fed., 569; Kishi vs. Oil Company, 298 Fed., l. c. 221; Sauter vs. Bank, 8 Fed. (2d) 121; Ex Parte, Skinner & Eddy Corporation, 265 U. S., 86; Small vs. Peters, 104 Fed. 401; Hat-Sweat Manufacturing Company vs. Waring, 46 Fed., 87; Clifford vs. Tomb, 21 Fed. (2d) 892; Scholl Manufacturing Company vs. Rogers, 51 Fed. (2d) 971; United Motor Service vs. Tropic-Aire, 57 Fed. (2d) 479; Pullman etc. Company vs. Transportation Company, 171 U. S., 138; Stevens vs. Railroad, 4 Fed. (2d) 97; Automotive etc. Company vs. Wolverine etc. Company, 15 Fed. (2d) 745; Page vs. Arkansas etc. Corporation, 53 Fed. (2d) 27; Callahan vs. Hicks, 90 Fed., 539; Gilbert Company vs. United Electrical Manufacturing Company, 33 Fed. (2d) 760.)

Upon hearing and argument it was urged by interveners that no present emergency exists which calls for any speedy determination of the validity of the gold clause of the
236 mortgage in controversy. I cannot agree to this argument.

Well-nigh all, if not all, of the secured bonded indebtedness of Debtor, aggregating in excess of $438,000,000 in the bonds evidencing such debts, have provisions for payment thereof, similar in all respects to those here under discussion. I cannot avoid the conclusion that it is vitally important to speedily determine whether the Debtor, in its Plan for Reorganization, must make provision for the payment of $439,000,000 (in round numbers), say, or some $743,000,000, which may well constitute the difference between solvency and insolvency.

Moreover, it is fairly plain that under that provision of the Amendment to the Bankruptcy Act, which controls the practice here, and which is found in Clause (e) of Section 205, Title 11, U. S. C., thirty-four per cent. of the stockholders may effectually block reorganization of the Debtor, until the fact of insolvency, vel non, is ascertained. To determine the above fact, absent knowledge of the sum of secured indebtedness, would require the expenditure of a huge sum in money and years of time. The worth and value of every claim against the Debtor, whether secured or unsecured, depends directly on the final adjudication of the question here indirectly in issue. So, it seems to me that every consideration demands that the validity of the gold clause of these bonds should speedily be gotten out of the way, or, at least, on the way out.

It follows, I think, both upon the many cases I have cited and upon the reason of the thing, that interveners should be denied the right to temporarily amend their bill as requested, and so it is ordered.

St. Louis, Missouri, May 22, 1934.

Endorsed: Filed May 24, 1934. Jas. J. O'Connor, Clerk.

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237 Record Entry of Submission of Question of Validity of Gold Clause.

(May 25, 1934.)

Petition of Bankers Trust Co., et al., as trustees under St. Louis, Iron Mountain and Southern First Mortgage in so far as the same relates to impounding of income and validity of gold clause, heard, argued and submitted.

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238 (Order Concerning Payments of Interest, etc.)

Order Concerning Semi-annual Interest Payments on Underlying Mortgages of Missouri Pacific Railroad Company, Principal Payments on the Plaza-Olive Building Mortgage and Equipment Trust, Series F, and Interest Payments on Equipment Trusts, Series B, C and F of the Missouri Pacific Railroad Company,

Totalling, Principal and Interest.....$1,611,223.33, Due May 1, 1934;

and

239 Interest Due December 1, 1933, Upon Central Branch-Union Pacific Railway Company First Mortgage Four Per Cent Bonds in the sum of .....$ 32,560.00

Upon reading the motion of the Trustees L. W. Baldwin and Guy A. Thompson, filed April 16, 1934, asking for advice concerning the semi-annual interest on the following underlying mortgages and equipment trusts of the Debtor, Missouri Pacific Railroad Company, due May 1, 1934, to-wit:

Third Mortgage, Missouri Pacific Railway.....$	76,560.00
Real Estate Security Mortgage, Pacific Railroad of Missouri .....$	19,975.00
First Mortgage, Plaza-Olive Building.....$	3,932.50
River and Gulf Divisions, First Mortgage....$	690,960.00
Equipment Trust, Series B .....$	36,575.00
Equipment Trust, Series C .....$	39,000.00
Equipment Trust, Series F .....$	147,262.50
	$1,014,265.00

also

principal payments due May 1, 1934, upon Missouri Pacific Equipment Trust, Series F, in the sum of .....$ 595,000.00

and the

Plaza-Olive Building mortgage, in the sum of..$ 1,958.33

making a total of principal and interest payments due May 1, 1934, of .....$ 1,611,223.33

240 and also

Interest, due December 1, 1933, upon the First Mortgage Four Per Cent Bonds of the Central Branch-Union Pacific Railway Company, in the sum of .....$ 32,560.00

and

it appearing to the Court that, heretofore, to-wit: on April 14, 1934, the Court entered its Order, No. 178, upon said motion, directing that notice should be given once a week, for two consecutive weeks, in the newspapers set forth in said Order, and also by mailing copy of said notice to the respective trustees of deeds of trust, trust indentures, mortgages, equipment trust agreements or pledges of collateral securing bonds, funded obligations and equipment trust certificates of said Missouri Pacific Railroad Company and to the Reconstruction Finance Corporation, the Railroad Credit Corporation, the Chairmen of all Bondholders' Committees, Counsel for said Committees, and the Collector of Internal Revenue of the United States;

and

it appearing from the evidence submitted to the Court that notices in pursuance to said Order to Show Cause have been duly given, as provided for in said Order, notifying all the trustees, creditors and counsel of aforesaid creditors named in said Order;

and

it further appearing from the evidence introduced in said cause that the Commissioner of Internal Revenue has filed claims for income taxes due against said Debtor, Mis-
241 souri Pacific Railroad Company, aggregating over $3,000,000.00, but that said claims are still pending before the Master, and that, included in said claims, are several

disputed items, involving over $2,000,000.00 of said claims for income taxes against said Debtor;

and

it further appearing from the admissions entered of record that Trustees are provided with cash sufficient to pay operating expenses and for all betterments and improvements needed during the year 1934, and also any income taxes which may be subsequently allowed in this cause in favor of the United States Government against said Debtor, Missouri Pacific Railroad Company, and that said Trustees have no immediate use for the funds necessary to pay said principal and interest payments due May 1, 1934, in the total sum of $1,611,223.33, and the interest payment due December 1, 1933, upon the Central Branch-Union Pacific Railway Company's First Mortgage Bonds in the sum of $32,560;

and

the Court further finding that the liens of the mortgages and equipment trusts upon which said principal and interest payments are due are valid, subsisting liens, prior to the lien, if any, which shall be adjudged in favor of the Commissioner of Internal Revenue upon said claim for income taxes due the United States Government:

It Is, Therefore, Considered, Ordered and Adjudged by the Court:

That said principal and interest payments due May 1, 1934, in the total sum of $1,611,223.33, should be paid by
242 said Trustees, and all of the same are hereby ordered paid, provided that the sum of $690,960.00, interest payment due May 1, 1934, upon the River and Gulf Divisions First Mortgage Four Per Cent Bonds of the St. Louis, Iron Mountain & Southern Railway Company, at the rate of four per cent, shall be received by the holders of said bonds in full of all interest due upon said bonds prior to May 1, and November 1, 1933, and up to May 1, 1934; also that said $32,560, interest due December 1, 1933, upon Central Branch-Union Pacific Railway Company bonds shall be paid.

And it appearing to the Court, from the evidence introduced by the Trustees, that there is a question whether the Guaranty Trust Company, trustee of the First and Refunding Mortgage bonds of the Debtor, is entitled to receive the interest upon $872,000.00 of said Central Branch-Union Pacific Railway Company's First Mortgage Four Per Cent Bonds, which, it claims, have been legally pledged with it, as trustee of said mortgage;

The Trustees are Ordered, until the decision by this Court of the said issue as to the validity of said pledge, to withhold payment of interest due upon said $872,000.00 of said Central Branch-Union Pacific Railway Company bonds, the question of the validity of said pledge, which has been raised by the Trustees herein, to be withheld by the Court until the further order of the Court thereon.

C. B. FARIS,
Judge, United States District Court.

Filed Jun. 9, 1934. Jas. J. O'Connor, Clerk.

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246 (Record Entry of Filing of Opinions on Motions of Trustees, etc.)

June 20, 1934.

Memorandum opinion of the Court on motions of trustees of debtor and others to construe, under Rule 29, Gold Clause of Bonds pleaded by Bankers Trust Company, et al., special interveners, filed.

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247 Opinion on Motions of Trustees of Debtor and Others, to Construe, Under Rule 29, Gold Clause of Bonds, Pleaded by Bankers' Trust Co., et al., Special Interveners.

The sole question presented here is the validity, vel non, of what I shall call for brevity and convenience, the gold clause of the bonds secured by the mortgage in which interveners are trustees. This clause provides that these bonds shall be payable in "gold coin of the United States of the present standard of weight and fineness". The word present, refers to the date of issue of the bonds, which was May 1, 1903.

248 Interveners contend, and their numerous adversaries, including the trustees of the Debtor, deny, that Public Resolution 10, now Sec. 463 Title 31, U. S. C., passed by the Congress on June 5, 1933, is invalid, for that it offends against the Federal Constitution.

No formal pleading points out the part or clause of the organic law, which stand, as a prohibiting monitor to oppose the validity of the above Resolution. But the trend of the argument convinces, that the "due process" provision of the 5th Amendment must have been held in mind by counsel for interveners.

So far as is presently pertinent here Section 463 supra reads thus:

"Every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts."

A few words of almost ancient history may add faint light to the case. Prior to the Civil War, it was a common custom to write into obligations for the payment of money, even into promissory notes, the provision that the debt should be payable in specie. The reason for this precaution was that much of the money, then in circulation, consisted of
249 paper promises to pay, issued by so-called State banks. (See, Bronson vs. Rodes, 7 Wall., 229). These were notorious for the ease with which they failed. It is not surprising then, that the payee in an obligation should have endeavored to guard against payment in possibly worthless paper money.

In the fifteen-year period following the Civil War, and until the so-called resumption of specie payment in 1879, provisos for the payment in specie became fewer. There were probably two reasons for this. First, the enaction by the Congress of the Legal Tender Acts, and the decision of the Supreme Court in the Legal Tender Cases, and second, because few men were so simple as to contract for payment in gold or specie, which reached at one time in the fifteen-year period, a premium, over the greenbacks of the era, of $2.85, or a little more. That is, it took $2.85 in the so-called legal tender money, or "greenbacks" to buy a single dollar in gold.

Again, after gold and silver had become either directly or indirectly the monetary backing of well-nigh all of the paper money in circulation, and due it may be, to that "prophetic discernment" mentioned by Mr. Justice Hughes, (now Chief Justice) in the Shubert Case, infra, it became and has continued to be the custom to write into bonds a gold clause of the sort here vexing the Court. How much of this custom is due to mere conservatism of the lawyers who prepare these

obligations and who are prone to walk in the tracks of those who passed that way before them, it is fruitless to inquire.

As forecast, there was, when the custom latterly began, no particular advantage derivable from the insertion of such a proviso. Ordinarily, gold bore no premium; for so-
250 called gold notes passed and repassed on a parity with other paper money including the outstanding residue of greenbacks, although these gold notes, till recently (See, Act of March 9, 1933; Gold Reserve Act, January 30, 1934) could be redeemed on demand for coined gold, dollar for dollar. But this situation did not at all dam the ever-increasing flood of obligations, made payable on their faces in gold. This perhaps in many cases, at least, because the term "payable in gold coin of the United States of the present standard of weight and fineness", is a sonorous and mouth-filling phrase and indubitably it adds a dignity and a glamour of richness to all bonds; particularly to those which the maker had not and never had, the remotest intention of ever paying in anything. There is another and political theory; but which being political, has no place in a judicial opinion. But whether the origin of the custom was fortuitous merely, or considered and sinister, is after all immaterial.

It is of course conceded, that the serious question here can not thus be lightly dismissed, however lightly history may indicate it probably came into the case. For it involves, even though it may have arisen as a mere gesture, a most vital and serious question of constitutional law.

If the above-quoted language of the Congress be valid, then on its face it clearly relieves the Debtor from compliance with the provisions of the gold clause of the bonds, and the question is solved; on the other hand if the Congress had no power under the Constitution to pass Public Resolution 10, the Debtor is not relieved from compliance, and the question is largely solved.

251 Every man of passing intelligence, at all in touch with business, knows that the sum total of bonds and notes in this nation alone, which are "payable in gold coin of the United States of the present standard of weight and fineness", exceeds by many billions the sum of this whole world's existing mined gold. These huge sums are variously estimated at from $90,000,000,000 to $125,000,000,000, of outstanding gold obligations, and $11,000,000,000, of available mined gold; but available only in the sense that it exists in the form of coin or bullion. These facts courts, presumably no less intelligent than mankind in common, may judicially notice.

They cannot, of course, notice the exact sum of these extant gold obligations, nor is it important here. All that is relevant are the ultimate facts. When such an ultimate fact, impossible of proof, but known by all men, becomes relevant, especially arguendo as here, a court may take judicial notice of it; because in such case, every man knows it, but no man can prove it accurately; since accurate proof is humanly impossible.

It is, of course, impossible in fact, and it has now become impossible in law to pay this huge sum of what I may call gold debts, out of the world's comparatively meager supply of gold. Learned counsel for the interveners appreciate this impossibility; so, they urge upon the Court, the alternative, not expressly stipulated in the bond, that payment must be made in current paper money, which has the present gold value of the sum agreed to be paid. In short, and in effect, that the Debtor shall be required to pay for each dollar, forty-one cents more in paper money than it agreed to pay in gold.

While the disastrous economic effect of the enforce-
252 ment of a contract standing alone, rarely, if ever, affords a sufficient legal reason against enforcement, it may yet be considered an urgent reason why enforcement should not be decreed, if it is legally possible to avoid it. Germane, at least, if not analogous, is the settled rule in cases for specific performance. So, briefly, let the possible and probable economical effects of the adoption of interveners' contention be considered. It will well-nigh double the sum total of the debts outstanding and now saddled upon transportation and industry, upon States and municipal corporations and even upon many individuals. For hardly can it be doubted, that these, lately staggering toward bankruptcy, under the bare letter of their debts, cannot carry this doubled load and survive. It is scarcely possible, that at any time, since the so-called depression of 1929, the total fair value of all of the actual wealth in this nation has exceeded the sum of $260,000,000,000. If to the sum of all debts, in whatever medium of exchange payable, there shall be added some $80,000,000,000 more, perforce the enforcement of the alleged alternative of the gold clause, then this country may well be bankrupt; in the sense, at least, that the total sum of its debts exceeds the total fair value of all of its assets. I refer, of course, to debts, both public and private. Concededly, the picture is overdrawn, because in practice, payment of these vast sums, agreed to be paid in gold, will not contemporaneously be demanded or exacted. But the argument yet discloses a theoretical and perhaps possible situation, which is almost appalling.

So, it is obvious, I think, that the upholding of these so-called gold clause contracts would vastly hurt, if not destroy business, and shake if not overturn the entire financial
253 structure of this country. It would, I repeat, bankrupt well-nigh every railroad, every municipality, every road district, or similar instrumentality of state government and well-nigh every State in the Union. And since in the financial crash of these debtor classes, the creditor classes, now urging the letter of their bonds, might well themselves go down in the common ruin; this situation as already suggested, should be avoided, if it is legally possible to do so, within constitutional limits. Specifically, what will happen in the cast at bar? Can it be doubted, that if the Debtor here shall be compelled to pay $743,000,000, upon its mortgage indebtedness of $438,000,000 it will be utterly bankrupted and financially destroyed; that its general creditors and stockholders will get nothing, and even its bondholders will be paid only a part of their inflated debt?

I think it is fairly clear, that validity may be decreed, without at all impinging upon the Constitution, and without stating a single novel proposition, but merely by following old rules, many times announced either concretely, or in principle, by the Supreme Court of the United States. And in doing so, I shall not find it necessary at all to rely upon that well-settled canon of construction, which admonishes that a statute may not be held constitutionally invalid till the court is convinced of invalidity beyond a doubt.

The legal propositions which seem to me to be decisive of the question mooted, may be stated in questions. These questions are: (1) In whom, or in what entity in this nation, is the power lodged to say what shall be money, or the medium of exchange, for the payment of public and private
254 debts? (2) If the answer be, the Congress, then, has any citizen the constitutional right to so contract as to obstruct, or nullify, the above power of the Congress? (3) Is not every citizen to be deemed to hold in contemplation, when he makes a contract for the payment of money, the power of the Congress to alter and change the medium of exchange, or money of the country, if such power be in the Congress? (4) Can a law or resolution of the Congress be declared invalid, when it does nothing, except to carry out a constitutional power of the Congress? (5) Have subsequent valid changes in the laws pertaining to gold coin rendered strict performance impossible in law? This fourth question is, obviously, a mere corollary.

The answer to the first premise in the chain of argument and proof, that these gold clause contracts are not enforceable to the ultimate letter of their language and alleged implications, is that the power to say what is money, or the medium of exchange under the Constitution, is vested in the Congress. Not only does the Constitution itself in full effect, say so; but had it not said so, the power would yet rest in the Congress, perforce a universal right inherent in all sovereign nations. Lately, in an oral opinion in the case of Kercheval vs. Ross, I had occasion to say this:

"Dissociated from international exigencies, or, more accurately, from the necessities of commerce between nations, and inhibitions, if any, found in the organic law, every sovereignty has the inherent power to decree anything to be money, or a medium of exchange which it may desire; as witness, the iron coins of Sparta, * * * and other historical instances of the use as money of practically worthless substances, which instances are too numerous to mention.

It will be observed that the Federal Constitution no-
255 where categorically limits money to gold and silver, or even to metallic substances. It does say that "the Congress shall have power * * * to coin money (and) regulate the value thereof". If it be argued, that the Congress by the use of the transitive verb "coin", in the language quoted, intended that the money of the United States be limited only to such metals as are capable of being coined or minted, this argument is met by the decision of the Supreme Court of the United States in Knox vs. Lee and Parker vs. Davis, 12 Wall. 457, the so-called Legal Tender Cases. But such an argument is also met by the very language which concludes the sentence quoted; for, obviously, if the Congress has power to regulate the value of the coined or minted money of the United States, it may, so far as the Constitution is concerned, fix its value, or its so-called precious metal content, so low that, when judged by the standards of other nations, its value will be less than that of the paper on which so-called fiat money is printed".

Again, in this case of Kercheval vs. Ross, discussing the physical absence of any constitutional prohibition against the passage by the Congress of an act which violates the obligation of a contract, I said this:

"There is no express constitutional inhibition anywhere to be found which forbids the Congress from passing an act which violates the obligation of a pre-existing contract. Not only will the Federal Constitution be read in vain to find such

a provision, but the Supreme Court of the United States has repeatedly so ruled. (Hepburn vs. Griswold, 8 Wall.,
256 l. c. 623; Mitchell vs. Clark, 110 U. S., l. c. 643; Legal Tender Cases, 12 Wall., 457; New York vs. United States, 257 U. S., l. c. 601). If occasionally the Supreme Court has seemed to find such inhibition, it has deduced it from the so-called spirit of the Constitution (See Hepburn Case, supra,) or it has allocated it (many times, no doubt, correctly) among the numerous offspring of that fertile and elastic provision touching "due process of law", found in the Fifth Amendment. It is not, I repeat, to be found in any of the language of either the Constitution, or of the several amendments thereto".

Again, in this same case of Kercheval vs. Ross, without at all intimating criticism of the Supreme Court, as is shown by the exception I made above, I said:

"I have never been able to see wherein the unhampered exercise by the Congress of the power to declare what shall be the medium of exchange at all impinges upon "due process of law", when the constituent elements of that term are considered. (Duncan vs. Missouri, 152 U. S., l. c. 382; State vs. Guerringer, 265 Mo., 409). For there is the very highest judicial authority for the statement that:

'Whatever power there is over the currency is vested in Congress. If the power to declare what is money is not in Congress, it is annihilated' (Legal Tender Cases, 12 Wall., l. c. 545.)"

Also, in the Kercheval Case, in order arguendo, to prove the thesis that the power to say what shall be money, is inherent in a sovereign, I took occasion to say, this:

257 "The express power granted to the Congress 'to coin money (and) regulate the value thereof', was necessary only in an historical sense, and for the sake of clarity; this, for the reason that each of the original thirteen sovereign States had, in virtue of their sovereignties, the inherent right to say what should be the medium of exchange, or money, within their several jurisdiction. But for this fact, and the further fact that a voluntary union of independent states to form a single sovereign entity was then unique and unsual in this world, it would not have been necessary to confer express power on the Congress to deal with money. But the States each had this power, and it was deemed wise to take it from them. Therefore, induced, evidently, by the settled theory that the Federal Constitution is a grant and not a limitation of power, it was deemed wise to express the power, and

this was done. But, I repeat, this was not necessary. The United States having, in effect, taken the power from the States would have inherited it and possessed it, by virtue of its own sovereignty, even if it had not been mentioned in the organic law. * * *

"So, I am of opinion that the United States has, through the Congress, the constitutional power to prescribe by statute what is legal tender for the payment of both public and private debts, either subsequent or antecedent in their accrual to the passage of the law. * * * Moreover, by the Act of June 28, 1834, it did in principle what is tantamount thereto, that is to say, by the Act last above-referred to, it decreased the gold content of the gold coins of the United States, which, of course, indirectly, if not directly, impaired the obligations of existing contracts."

258 "In the absence of any provision in the Federal Constitution forbidding the passage of a statute which violates the obligation of a contract, and in the light of the ruling of the Supreme Court in the Legal Tender Cases, supra, it seems impossible to escape the conclusion that the Congress possesses the power to say what shall be the medium of exchange, even though the exercise of the power may indirectly result in the impairment of the obligation of existing contracts."

But the truth of this basic premise, in no way rests on my humble views, or on the rather plain language of a construable organic law; it rests on the decisions of the highest court in the land. (See Legal Tender Cases, 12 Wall., l. c. 543. Veazie vs. Fenno, 8 Wall. 533.)

From the above statement of the location of this power, the Supreme Court has never receded. Indeed, the truth of it is rendered so plain and simple, both by history and by logic, that it is almost amazing that it ever became necessary for the Supreme Court to point out the lodgment of the power.

If the premise laid down in the first question be proven, and none I feel sure will be hardy enough to deny it, I come in the argument, to the second premise, embodied in the second question, supra, which is:

Can any citizen, (and I include, of course, corporations) be permitted to hamper, obstruct, forestall, or hamstring the Congress, in the exercise of its power to declare what shall be money? It seems to me, that the simple statement of the question furnishes its own answer. Again, in addition to the obvious answer dictated by the plainest and simplest logic

and the reason of the thing, there is ample authority
259 furnished by the numerous decisions of the Supreme
Court of the United States, in cases on all fours in
principle.

In my opinion, under many rulings of the Supreme Court of the United States there can be no doubt that contracts, good when made, may become bad and incapable of enforcement, by reason of the passage by the Congress, acting within its constitutional limits, of subsequent prohibitions against the enforcement of such contracts. As witness, numerous cases decided by the Supreme Court of the United States which actually, or in effect abrogated prior, but perfectly good contracts, when such contracts were subsequently banned or forbidden by the Interstate Commerce Act. Just a few of these may be cited. (See, Louisville-Nashville R. R. vs. Mottley, 219 U. S. 467; Addyston Pipe Co. vs. United States, 175 U. S. 211; Philadelphia &c R. R. vs. Shubert, 224 U. S. 603; New York vs. United States, 257 U. S. 591.)

In the Case of Shubert, supra, the Supreme Court said, at page 613 this:

"To subordinate the exercise of the Federal authority to the continuing operation of previous contracts, would be to place, to this extent, the regulation of interstate commerce in the hands of private individuals and to withdraw from the control of Congress so much of the field as they might choose by *prophetic discernment* to bring within the range of their agreements. The Constitution recognizes no such limitation. It is of the essence of the delegated power of regulation that, within its sphere, Congress should be able to establish uniform rules, immediately obligatory, which as to future action
should transcend all inconsistent provisions. Prior
260 arrangements were necessarily subject to this para-
mount authority." (Italics are mine.)

Before the above quoted pronouncement, the Supreme Court had said, upon a question, in principle wholly germane, this:

"Long before the above cases were decided it was said in Knox vs. Lee, 12 Wall. 457, 550, 551, that as in a state of civil society, property of a citizen or subject is ownership, subject to the lawful demands of the Sovereign, so contracts must be understood as made in reference to the possible exercise of the rightful authority of the Government, and no obligation of a contract can extend to the defeat of legitimate government authority".

"These principles control the decision of the present question. The agreement between the railroad company and the Mottleys must necessarily be regarded as having been made subject to the possibility that, at some future time, Congress might so exert its whole constitutional power in regulating interstate commerce as to render that agreement unenforceable or to impair its value. That the exercise of such power may be hampered or restricted to any extent by contracts previously made between individuals or corporations, is inconceivable. The framers of the Constitution never intended any such state of things to exist." (Louisville & Nashville R. R. Co. vs. Mottley, 219 U. S. 467.)

In principle, I am wholly unable to distinguish the question before the Supreme Court, when it spoke as above quoted, from that of the question now confronting me in the case at bar. If I may immodestly venture to be dogmatic, I assert the impossibility of distinguishing these questions. The
261 powers of the Congress within the field of permissible legislation cannot be obstructed or nullified, by what Mr. Justice Hughes (now Chief Justice) characterized in the Shubert Case, supra, as "prophetic discernment". Any other and different conclusion, would be well-nigh abhorrent to both logic and common sense. For, I repeat, one who makes a contract, in a matter within the field of permissive congressional legislation must be deemed to do so with the knowledge that a subsequent act of the Congress may render void his solemn agreement. This rule and principle, which is not capable of distinction here, runs through the very warp and woof of the Federal Constitution. It has been invoked, and it has served to revoke and abrogate an antecedent contract valid when made, between a lawyer and his client (Calhoun vs. Massie, 253 U. S. 170); between a railroad and the holder of a free pass, issued antecedently and upon a good consideration (Louisville & Nashville R. R. Co. vs. Mottley, supra); between an employee and a railway, when, sued under the Employers' Liability Act, the railway set up an antecedent contract barring the beneficiary in a relief fund from maintaining an action for damages for personal injuries (Philadelphia &c R. R. Co. vs. Shubert, supra); between the United States and a bridge company, which constructed a bridge in navigable waters under State legislative sanction, valid when made (Union Bridge Co. vs. United States, 209 U. S. 364; Monongahela Bridge Co. vs. United States, 216 U. S. 177). It is not alone, I repeat, in the fields of interstate commerce, navigable waters, and lawyers' contracts for a fee for the recovery of money and pensions from the government, that

the right of the individual to forestall and obstruct the
262 Congress by an antecedent contract, is denied. The same principle has repeatedly been applied by the Supreme Court in matters of riparian rights. (See, Scranton vs. Wheeler, 179 U. S. 141; Greenleaf &c Co. vs. Garrison, 237 U. S. 251; Willink vs. United States, 240 U. S. 572; Cubbins vs. Mississippi, 241 U. S. 251; Jackson vs. United States, 230 U. S. 1;) and under the several Bankrupt Acts, (See, Hanover Bank vs. Moyses, 186 U. S. 187; Canada &c Ry. Co. vs. Gebhard, 107 U. S. 527; In Re Klein, Fed. Cases No. 7865; Sturges vs. Crowninshield, 4 Wheat. 367).

It is difficult if not impossible to conceive of an act of the Congress which more clearly destroys in many phases, the obligations of antecedent contracts, than does a Bankrupt Act. The creditor is presently forbidden to sue till the lapse of a stated period, (Sec. 29, Title 11, U. S. C., Sec. 205, Clause (1), Title 11, U. S. C.), and absolutely forbidden to sue after the discharge of the bankrupt. He must take but a part of his debt, and he must accept a composition forced on him by the votes and acts of others, when such composition and the taking of but a part are, in the very teeth of his contract. Yet, because the Constitution relegated this subject to future congressional action, Bankrupt Acts, however destructive to existing contractual rights, have been up to now uniformly upheld.

But a little diligence will unearth many other cases, which fully uphold the basic principle above announced. As forecast, the cases I cite above, uphold the principle, that when a person makes a contract involving a subject-matter within the ambit of the Congress' constitutional field of permissive
legislation, he does so at the peril that the Congress
263 may so change, or modify the law as to render his contract void, or unenforceable.

The above considerations and the cases cited, prove I think conclusively, the truth and correctness of the third question. Questions (2) and (3) are wholly germane, and the answer to one furnishes the answer to the other. It has long been necessary, in order at all to enforce the law, to indulge the conclusive presumption that every citizen knows the law. Actually, of course, the presumption is a fiction, but it is so necessary a fiction, that it is settled. So, if it be true, that the power to say what shall be money, be lodged in the Congress, then when a citizen makes a contract for the payment of his debt in gold, he must be deemed to have saddled himself with the knowledge, and to have had in contemplation the possibility, that his contract may become unenforceable,

through the exercise by the Congress of the power to declare something other than gold to be money. But I am not called on here to further belabor this well-settled doctrine, or to cite any of that multitude of cases, which, without a dissenting voice uphold it; because counsel for interveners concede in their briefs that "all the parties to these contracts are conclusively presumed to have known the law."

Coming to the proposition, or premise (4), which, as said is a mere corollary: Can a law, or resolution of the Congress be deemed, or held to be invalid, when it does nothing, except to carry out a power conferred on it, both by the Constitution and by virtue of the inherent sovereign right of the entity, for which the Congress is empowered to legislate. Again the question answers itself, even if the Supreme Court
264 had not, already repeatedly answered it. That answer is so plain and obvious as not to call for either exposition or the citation of authority.

In addition to the language already quoted from Public Resolution 10, the Congress saw fit to declare, in a preamble to this resolution, a policy of the Congress and to characterize gold clause contracts as being designed and calculated to "obstruct the power of the Congress to regulate the value of the money of the United States and are inconsistent with the declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the market and in the payment of debts".

No attack is made here by counsel for intervenors, for that the Congress has no power to declare a continuing and ever-binding policy; nor is that question at all relevant or involved here. It is enough that it has been declared to meet what the Congress deemed a present and pressing emergency. But learned counsel for intervenors, in both their oral and printed arguments, do insist, most ably and strenuously, that no public policy is at all involved in a matter of private contract between a corporation and individual bondholders as here.

I submit with deference, that they have in this assumption fallen into grave error, in my opinion. Their conclusions upon the point are tantamount to the assertion, that any two members of our national compact bottomed as it is, on representative government may flout and disobey both the organic law and the mandate of their government, and arrogate to themselves a power which, as I labor to show, has been solemnly committed to the Congress alone. If this
265 may be done by two contracting parties in any given contract, I see no reason why it may not be done in

every contract; with at least, the theoretical result, to turn business and commerce back to ancient barter, or swapping of commodities. Commerce between the States, over which the Congress certainly has power, would be hampered or destroyed, and the only debts left payable in money would be debts due to and from the government itself. Surely, the power in the Congress to say what shall be money is not to be restricted, to a medium of exchange, which is to be binding only when the government pays or is paid. No such narrow meaning is to be found in the language of the Supreme Court when it declared, that "if the power to declare what is money, is not in the Congress, the power is annihilated."

Concededly, neither national policy, nor the Congress, is at all concerned ordinarily, in the terms of any moral private contract, so long as that contract does not infringe upon, nullify or circumvent a law of the Congress which it had the Constitutional power to pass. It is a settled rule of law that a thing which may not be done directly, may not lawfully be done indirectly. Obviously, no two persons can by a private contract directly repeal a law passed by the Congress, and so by the same token they can not do so by indirection.

But when all is said, the language of the preamble above quoted has little to do with this case. For the Congress used it as mere argument for the action it purposed taking, so I, in effect, have used it, in an effort lawfully to uphold, what the Congress did. But if, the point were vital, it would I think lose all force, in view of the power of the Con-
266 gress to forbid by suitable statutes the use as money of anything not put out under its own authority. (See, Veazie Bank vs. Fenno, 8 Wall. 549; National Bank vs. United States, 101 U. S. 1; Briscoe vs. Kentucky Bank, 11 Peters 257; Sturges vs. Crowninshield, 4 Wheat. 193; Ling Su Fan vs. United States, 218 U. S. 302.)

The policy which troubles here is that deducible from and expressed in the Resolution itself. This policy as forecast, is attacked by interveners by the bold contention that no private contract, whatever its terms and implications, and whatever its effects upon business, commerce and the nation may be, is any concern of the Congress. Cases no doubt may be found, which sustain this general contention in principle, but not in the broadness for which interveners here contend. Existing complexities of life, business, science and commerce have compelled a broader, saner and more correct view.

Apposite to this view and illustrative of the concept, the Chief Justice of the United States, speaking for a majority of the Supreme Court, in the late case of Home &c Assn., vs. Blaisdell, 290 U. S., 398, said this:

"Where in earlier days it was thought that only the concerns of individuals or of classes were involved and that those of the State itself were touched only remotely, it has later been found that the fundamental interests of the State are directly affected, and that the question is no longer merely that of one party to a contract as against another, but of the use of reasonable means to safeguard the economic structure upon which the good of all depends".

267 Again, and more recently, both the ordinary rule, and in fair effect, the exceptions to it and the modifications of it, are tersely stated by Mr. Justice Roberts in the case of Nebbia vs. New York, 291 U. S., ... thus:

"Under our form of government the use of property and the making of contracts are normally matters of private and not of public concern. The general rule is that both shall be free of governmental interference. But neither property rights nor contract rights are absolute; for government cannot exist if the citizen may at will use his fellows, or exercise his freedom of contract to work them harm. Equally fundamental with the private right is that of the public to regulate it in the common interest".

There is no subject on which the Congress is permitted to act which is more vital to labor, industry and commerce than is the question of what shall be money. While of course in the business of the world, actual money is used in probably only one-fiftieth of the world's business; checks upon bank-credits accounting for the remainder. This proportion is further vastly increased by the fact that banking experience discloses that about one-tenth of the total amount of deposits furnishes a sufficient safeguard. Concededly, the money of the nation, is in the final analysis behind these checks and bank-credits. So, if the money and credits of a country are permitted to pass into hands which close upon them, the effect upon labor, industry and commerce are destructively disastrous, and therefore, the matter of what shall be money is a matter in which the nation, and the
268 Congress which legislates for it, is most vitally concerned.

But as mentioned already, another contention is put forward by those who urge the validity of the gold-clause. In

that contention, they say, that even if the debt cannot be paid in gold, they are yet entitled to payment in such sum in currency as shall equal the present gold value of the number of dollars involved; in short, in gold, or its equivalent. I think it ought to be sufficient to say of this contention, that it is not "so nominated in the bond". In other words, the contract, does not say, that if gold is no longer money when pay-day comes, then payment shall be made in such money as is current; but on the basis of the amount of current money which a gold dollar will buy. I think the very terms of the contract preclude such a judgment.

The gold clause here vexing, is not a promise to pay these bonds in gold as money. It is a promise to pay in gold, not as money, but as a mere commodity; the bulk whereof, or the quantity of gold to be paid, to be equal to the gold content of one thousand dollars of gold coin of the United States of the standard of weight and fineness as of May 1, 1903. (See, Gregory vs. Morris, 96 U. S. l. c. 624; Bronson vs. Rodes, 7 Wall., 229, Butler vs. Horwitz, 7 Wall., 260.) In short, it is a mere agreement of barter, or swapping of commodities. If, in 1903, the contract had been that thirty years later, the maker would pay to the holder of each bond 100 piculs of Chinese opium, how would the case stand? Since 1903, the Congress, having the power to do so, has forbidden the importation of opium, (except under conditions designed to limit its use to medicinal purposes) and made the possession of it, in ordinary hands, a criminal offense. (Act, May 26, 1922, 42 Stats. 596). Thus, since the contract to pay in piculs of opium has since the contract was made, become impossible of performance by operation of law, what would be the situation? In law, I assume the contract would be void; in equity, the rights of the maker as well as those of the payee would be considered, and not those, as here insisted, of the payee alone. These equities, involving the alternative of utter destruction of the Debtor herein and total losses to its unsecured creditors and stockholders, I have already pointed out. In such situation a court of equity might well say to the payee, that having seen fit to contract for payment not in money, but in a presently unobtainable commodity, the money of payment must be such money as the law provides in ordinary cases, and to be measured in quantity by tale and not by the market price of the opium in 1934. The contention I repeat, involves writing into the contract language neither expressed nor implied by its actual terms. It is a trite truism to say, that

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rarely if ever, is a contract for the payment of a fixed sum of money carried out by the payment in money having the identical so-called purchasing power of the dollar agreed on, as and when agreed on. Between the date of the contract and the day of payment, the dollar will usually, if not always rise or fall when measured in terms of purchasing power. When regard is had to the precise nature of money, this contention, absent a contractual basis, has but little more to sustain it, than would the contention that payment in terms of dollars should be bottomed on the price of wheat. That is to say, if a dollar will, when the contract is made, buy two bushels of wheat, but when payment falls due the
270 same dollar will buy only one bushel of wheat, then instead of the dollar agreed to be paid, two dollars shall be exacted. And this too when the contract, as here is silent on the point. Money is merely a medium of convenience through which wealth, and labor are measured and moved in business and commerce, and between man and man.

But the contention, that, absent as here, the legal and practical possibility of payment in gold coin, their debt must be paid in the equivalent of gold, is that on which interveners mainly and most confidently rely. Concededly, their reliance is bottomed on persuasive and most exalted authority, so far as concerns the bare rule of stare decisis. This cannot be said of any other of their contentions in this case. Upon the point that they are entitled to be paid in current paper money, which according to its present value is the equivalent of the gold dollars of their contract, they not only cite a recent decision of the English House of Lords, and two decisions of the Permanent Court of International Justice, but a line of cases decided by the Supreme Court of the United States; among which as typical, are Gregory vs. Morris, 96 U. S. 619; Trebilcock vs. Wilson, 12 Wall. 687, and Bronson vs. Rodes, 7 Wall., 229.

The decisions first above-mentioned are merely persuasive, as coming from two great and learned tribunals. But as an inferior Court, I am in duty bound to follow the rulings of the Supreme Court; unless it is legally possible to distinguish the case at bar from the facts, the law and the situation existing, when the Gregory Case, the Trebilcock Case and the Bronson Case were up for judgment.

Hampered by this bounden duty, there is yet small
271 consolation in the fact, that before Bronson vs. Rodes, supra, and even after it, and until coerced by

the decision of the Supreme Court in Trebilcock vs. Wilson, supra, and by the Federal supremacy in the matter, therein declared, a majority of the highest courts in the several States of the Union disagreed with the doctrine of Bronson vs. Rodes. (See, Note, 84 A. L. R. 1503, et seq.)

Moreover, the learned writer of the above note, upon the point whether the question here vexing has been finally and authoritatively settled, says this:

"Although the validity and enforcement of provisions in contracts for payment in gold or gold coin have been sustained by many cases in this country, including a number of decisions by the Federal Supreme Court, the question can not now apparently be regarded as authoritatively settled because of changes in legislation and in conditions. Both the interpretation and the enforceability of the contract may conceivably be affected by these charges".

It may well be and arguendo conceded, that when resort is had for guidance to abstract justice and cold logic, the conclusions reached in each of the cases relied on by interveners are impeccable. But they were the result of the application of what I may call pure natural justice as contradistinguished from that same justice affected and modified by policy, statute and constitution. Natural justice is that tenet of philosophy which weighs the rights of mankind through the exercise of the most refined logic and fairness. It is germane, if not identical, with that ideal justice discussed and defined by Plato and Aristotle. But its field of operation must be unhampered by factual impossibility of performance or by restricting statutes, organic laws,
272 or policies of state. So, if such justice shall infringe upon national policy, or the Constitution, or be opposed by a valid statute, it cannot be administered or applied.

This at first glance may seem harsh, but it must be borne in mind, that in a republic, laws are made and policies are established by and for the greatest number for the greatest good; by and for the majority and not for the few. The latter may even be harmed in person or property by the enforcement of a statute, which while harming the few yet helps the great majority. Ours is a government by law and not of men. Having adopted a Constitution, which defined the limits of legislative permission, we then delegated to the Congress, elected by the greater number of the people, the duty to represent and speak for all of the people in fixing policies and making laws. Every law deprives a few men of the alleged right to do what they wish to do; but that does

not make the law bad; since it merely forbids the few from doing acts which harm the many. So, in fact, I think the harshness of the rule is upon the debtor and not upon the creditor.

Can it be doubted that the Congress had the right to say to those who had made contracts, the effect of which was to forestall and circumvent the Congress itself, that having usurped a power belonging to the Congress, they must give it back, because the exercise of it by a few wilful men would vastly harm this country? Again, can there be any doubt that it would do so? It cannot, of course, be doubted that if payment be decreed to be made in the paper money equivalent of gold, the power of the Congress in the premises will be just as effectually thwarted and nullified, as if payment in gold were decreed.

273 In each of the cases, and classes of cases above mentioned and relied on by interveners, gold was readily obtainable, (See, Bronson vs. Rodes, supra, l. c. 251) nor was the possession of it, at the time and place fixed for payment forbidden by law. Payment in gold in neither case was forbidden by either policy or statute. Here at bar, payment in gold, and even the possession of enough gold with which to make payment are forbidden to both payee and maker, and gold is wholly unobtainable. (See, Gold Reserve Act, January 30, 1934, 48 Stat. 340.) It was not so in the Gregory, Bronson and Trebilcock Cases. Moreover those cases, in effect, ruled that since the maker of the obligation involved, had agreed to pay in gold, or specie, and since he could lawfully obtain the agreed commodity of payment, he must do so; but if he saw fit not to pay in the commodity agreed on, he could offer and the payee must accept the equivalent in current paper money.

Reverting to, and elaborating the notion, that factual and legal impossibility of performance excuses the breach of a contract, I quote what was said on the point by Judge Van Devanter (now Mr. Justice Van Devanter), in the Case of United States vs. Dietrich, 126 Fed., l. c. 674, thus:

"It is well established by the English courts and by the courts of this country, Federal and State, that where performance of a contract or agreement, lawful in its inception, becomes unlawful by reason of any subsequent event, the contract or agreement is thereby dissolved or terminated, in so far as it remains executory, and both parties are excused from its further performance."

274 Nor is the legal situation at all affected, for that the bonds in question here fell due May 1, 1933. This for the reasons, that the Act of March 9, 1933, was then in force, and the properties of the Debtor were then in custodia legis.

I think the above considerations serve to distingush, the cases relied on by interveners, from the facts and law up for decision in the case at bar.

Finally interveners contend that, conceding the power of the Congress to pass a valid law, which indirectly renders void an antecedent contract, yet it may not pass a law which directly does the like.

Obviously, this contention is based on mere modality, and not on final result of the law. Likewise the contention carries the tacit admission, and briefs of counsel the express assertion that the Congress may do indirectly that which it has no power to do directly. No cases are cited by counsel for the above doctrine, and I know of none which uphold it. I had deemed the law to be that a legislative body, no more than an individual, could do indirectly that which it had no lawful power to do directly. Quite often it has been ruled by the Supreme Court that a state legislature, could not in a law, by a mere subterfuge of intentional, or even of unintentional, confusion, bring about indirectly a legal result which it had no power to bring about directly. If in short, the law on its bare face purported to produce a result in a field wherein the result was permissible, yet if the actual result was to invade a field wherein the result was prohibited, the law could not stand. This indicates that courts are concerned only with ultimate results, and not merely with the technical mode of consummation. I think the contention is in
275 principle answered by the Nebbia Case and the Blaisdell Case, supra, as well as others I have cited herein.

Moreover, that identical thing which interveners seem to concede may be done lawfully, has already been done in this case by laws and acts in pais, in nowise here attacked. For on January 31, 1934, pursuant to power conferred by the Act of May 12, 1933, the President by proclamation, reduced the gold content of the gold dollar, by comparison (cf. Sec. 315, Title 31, U. S. C.) to a little more than fifty-nine cents. But for other legislation (which I have already discussed) which took gold coin out of circulation, and forbade possession of it, payment in these deflated gold dollars would have had the identical effect of indirectly violating the obligation of interveners' contract. It would, I think, be an anomalous situation, if the Congress has the power to do indirectly a thing

it possesses no power to do directly. As forecast, it is settled, I think, that a thing which can not be done directly can not be done indirectly. By parity of reasoning it seems clear that a thing which can be done indirectly, can also be done directly. Germane to the notion, what was said in the Shubert Case, supra, seems apposite, thus: "Prior arrangements were necessarily subject to this paramount authority."

Summing up the premises laid down in the beginning, it seems to me impossible to escape these legal conclusions: (a) That in the Congress alone is lodged the power to say what shall be used as money; (b) no person in this nation has the right to make a contract the effect of which is to nullify, obstruct or circumvent the power of the Congress to say what shall be the national money, or medium of exchange;
276 (c) every person who enters into a contract is, in law, conclusively deemed to hold in contemplation the power of the Congress to alter and change the nature and so-called value of the medium of exchange, or money of the nation; (d) no law passed by the Congress can be invalid when it does no more than to carry out a power vested by the Constitution in the Congress and, (e) subsequent valid laws have rendered strict performance of the terms of the gold clause legally impossible.

And so it follows, that Public Resolution 10 is in my opinion valid; that the gold clause is therefore unenforceable in the ultimate letter thereof as urged by interveners, and is enforceable in equity only, to the extent that interveners as trustees, are entitled to recover, or to be paid on each $1,000 par value bond in controversy, the sum of $1,000 in such money of the United States as is now current, or as shall be current when the final decree herein for payment is entered.

Let an order be presented for settlement and entry, accordingly.

FARIS, J.

Filed June 20, 1934. Jas. J. O'Connor, Clerk.

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279 Record Entry of Filing of Several Answers to Special Intervention of United States of America.

(June 21, 1934.)

Separate answers of Missouri Pacific Railroad Company; New Orleans, Texas & Mexico Railway Company; St. Louis, Brownsville and Mexico Railway Company; Beaumont, Sour

Lake and Western Railway Company; San Antonio, Uvalde & Gulf Railroad Company; Houston Northshore Railway Company; and International Great Northern Railroad Company and their trustees to special intervention of United States of America for income taxes, etc., filed.

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280 (Order Directing Trustees as to Keeping of Records and Accounts Showing Earnings, etc.)

This cause coming on further to be heard on this day upon the petition dated December 4, 1933, of Bankers Trust Company and William H. Bixby, as Trustees under the St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions, First Mortgage, and upon the answers thereto by L. W. Baldwin and Guy A. Thompson, Trustees of the Missouri Pacific Railroad Company; Guaranty Trust
281 Company and Benjamin F. Edwards, as Trustees under the First and Refunding Mortgage of Missouri Pacific Railroad Company; United States of America; and Reconstruction Finance Corporation; and the Court having heard the arguments of counsel and being fully advised in the premises:

It Is Ordered, Adjudged and Decreed as follows:

1. That L. W. Baldwin and Guy A. Thompson, Trustees of the Debtor (hereinafter referred to as the "Debtor's Trustees"), are directed to keep records and accounts showing separately the tolls, earnings, incomes, rents, issues and profits which have come into their possession since January 1, 1934, or may hereafter come into the possession of said Trustees, and which have been or may hereafter be derived from any of the properties covered by the St. Louis, Iron Mountain and Southern Railway Company, River and Gulf Divisions, First Mortgage (hereinafter referred to as the "Mortgage").

2. That the Trustees of the Mortgage (hereinafter referred to as the "Mortgage Trustees"), shall not be required to make any further demand or application for the enforcement in this proceeding of any lien or right in respect of any of the tolls, earnings, incomes, rents, issues and profits of the property covered by the Mortgage, (including the tolls, earnings, incomes, rents, issues and profits of any mortgage bonds subject to the lien of the Mortgage) accruing since January 1, 1934, as the same may hereafter be determined herein by a formula for the allocation of earnings duly approved by the

Court upon due notice to the parties of record; and the
282 rights of the Mortgage Trustees shall be determined as if due demand and application had been made by the Mortgage Trustees, and this order had been entered on January 1, 1934.

3. That the Mortgage Trustees shall be entitled to apply at the conclusion of this proceeding, or at such earlier time or times as they may deem proper, upon due notice to all the parties of record, for the enforcement of their liens upon or rights in the tolls, earnings, incomes, rents, issues and profits of the property covered by the Mortgage (including the tolls, earnings, incomes, rents, issues and profits of any mortgage bonds subject to the lien of the Mortgage), and of their lien upon or rights in any of the proceeds thereof, and for an equitable adjustment as between those interested in this proceeding, with respect to any use which may have been made of any of the same; but nothing in this order shall be construed as determining the merits of any such application, or as requiring the Debtor's Trustees to pay over or earmark any of the same pending the further order of the Court, except such as may be received on account of the securities referred to in Paragraph VIII of the petition of the Mortgage Trustees.

4. That this order shall not be deemed to be a determination of the necessity for the making of any demand or application herein mentioned and, except as expressly provided herein, is without prejudice to any of the rights of the Mortgage Trustees, or of any other party hereto, in respect of any tolls, earnings, incomes, rents, issues and profits, or any of the proceeds thereof; and

5. That all other issues raised by said petition of the
283 Mortgage Trustees, and the answers thereto, are hereby reserved, except the issue as to the effect of the gold clause, which was set down for argument on May 25.

C. B. FARIS,
United States District Judge.

Approved:

EDW. J. WHITE,
For Trustees.

NAGEL, KIRBY, ORRICK & SHEPLEY,
For Guaranty Trust ~~Co.~~ and B. F. Edwards, Trustees under 1st and Rfdg. Mtge.

ALEXANDER & GREEN,
For Bankers Trust Company and William H. Bixby, Trustees, Petitioners.

Approved:

RECONSTRUCTION FINANCE CORPORATION,
By C. M. CLAY,
MAX O'RELL TRUITT,
Counsel.

Filed Jun. 21, 1934. Jas. J. O'Connor, Clerk.

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284 Record Entry of Filing of Decree.

(July 6, 1934.)

Decree on petitions of trustees of debtor and others to construe Gold Clause in bonds pleaded by Bankers Trust Company, special intervener, under St. Louis, Iron Mountain and Southern Railway Company River and Gulf Divisions First Mortgage, filed.

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285 Decree on Petitions of Trustees of Debtor and Others, to Construe the Gold Clause in Bonds Pleaded by Bankers Trust Company, Special Intervener, Under St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions First Mortgage.

The above cause having come on to be heard, on the twenty-fifth day of May, A. D. 1934, upon the petition of Bankers Trust Company of New York and W. K. Bixby, Trustees of the St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions First Mortgage, interveners, and upon the answer of the Trustees of the Debtor, Mis-
286 souri Pacific Railroad Company, and the answers of the Reconstruction Finance Corporation and United States of America, interveners, praying for affirmative relief therein, involving and concerning the validity of the so-called "gold clauses," hereinafter described, contained in the St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions First Mortgage, dated May 1, 1903, and the bonds issued thereunder, and praying for a decree that the amount due under the St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions First Mortgage, dated May 1, 1903, and the bonds issued thereunder, is the principal amount named in the bonds validly issued and outstanding thereunder, with interest thereon, all payable in

such money of the United States as is legal tender for the payment of debts, notwithstanding the so-called "gold clauses" contained in said mortgage and bonds,

and

upon the issues presented by the said petition and the said answers, praying for affirmative relief therein, involving and concerning the validity of the so-called "gold clauses" hereinafter described contained in said mortgage and said bonds,

and

counsel for Bankers Trust Company and W. K. Bixby, as Trustees of said St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions First Mortgage, dated May 1, 1903, having contended that Joint Resolution No. 10 of Congress, of June 5, 1933, is in contravention of the Constitution of the United States and beyond the
287 powers of Congress as applied to the so-called "gold clauses" of said mortgage and said bonds, and having contended that Congress has no power to violate or impair the obligation of said mortgage and bonds for payment in gold coin of the United States of the standard of weight and fineness existing on May 1, 1903, or its equivalent, and the Court having considered the evidence and the arguments and briefs of counsel, and being fully advised in the premises, doth make the following Findings:

(1). That it is provided in the said Mortgage and in each of the said Mortgage Bonds by the so-called "gold clauses," hereinbefore mentioned, that the principal of and the interest on the indebtedness represented thereby is payable in gold coin of the United States of the standard of weight and fineness existing on May 1, 1903.

(2). That the interveners, Bankers Trust Company and W. K. Bixby, as Trustees under the said mortgage, claim that there have been heretofore validly issued and are now outstanding under and secured by said mortgage bonds providing for the payment of $34,548,000, principal amount, in gold coin of the United States of the standard of weight and fineness existing on May 1, 1903, and interest thereon payable in like gold coin.

(3). That the said gold clauses contained in the said Mortgage and Bonds, as hereinbefore set out, are void and cannot legally be enforced by valid judgment at law, and if enforceable, in equity, then only to the extent that interveners, as

Trustees, are entitled to recover on each $1,000 (principal amount) bond in controversy the sum of $1,000 and the
288 interest due thereon, in such money of the United States as is legal tender for the payment of debts.

(4). That payment of the amount of the principal and interest due upon said bonds, in such money of the United States as is legal tender for the payment of debts, will discharge, dollar for dollar, the face amount of such indebtedness on account of the principal and interest due on said bonds.

(5). That Public Resolution No. 10, 73d Congress, approved June 5, 1933, is constitutional and valid, and by virtue thereof payment of the principal of and interest on said Mortgage Bonds in any gold coin of the United States, or in an amount of money equivalent to the value of gold coin, is against public policy.

(6). That payment in gold, or in gold coin, is and has been since May 1, 1933, the date of the maturity of said Mortgage Bonds, impossible in fact and in law.

(7). That payment in lawful money of the United States in an amount equivalent to the value of gold coin would seriously interfere with the reorganization of the Debtor Railroad.

(8). That the pendency, undisposed of, of the question thus presented interposes a serious obstacle to the continued orderly administration of the affairs of the Debtor Railroad and impedes, delays, hinders and obstructs the reorganization of said Railroad.

Wherefore, It Is by the Court, this 6th day of July, A. D. 1934,

Ordered, Adjudged and Decreed that the said Trustees
289 and the said bondholders are entitled to payment of $1,000 upon each said bond in the principal amount of $1,000, validly issued and outstanding, in such lawful money of the United States as is legal tender for the payment of debts, with interest thereon, also in such lawful money of the United States; and that such payment shall extinguish the total amount of both principal and interest due upon the said bonds.

Further Ordered, Adjudged and Decreed that any and all amounts payable to the said Mortgage Trustees shall be paid to said Trustees in any lawful money of the United States which is legal tender for debts; and that the money so paid

shall be accepted by said Trustees at the nominal value thereof and in discharge, dollar for dollar, of the face amount of the indebtedness, including interest, to which it may be applied.

And It Is Further Ordered, Adjudged and Decreed that the claims of the said Trustees and the said bondholders for payment in gold or its equivalent and for payment in excess of that herein decreed is denied and rejected.

C. B. FARIS,
United States District Judge.

Filed Jul. 6, 1934. Jas. J. O'Connor, Clerk.

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293 (Petition for Appeal to be Allowed by U. S. District Court.)

(Filed July 26, 1934.)

To the Honorable Charles B. Faris, Judge of the United States District Court for the Eastern Judicial District of Missouri, Eastern Division:

Your petitioners, Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage Due May 1, 1933, pray that an appeal be granted from the decree entered in the above-entitled cause on July 6, 1934, entitled "On Petitions of Trustees of Debtor and Others, to Construe the Gold Clause in Bonds Pleaded by Bankers Trust Company, Special Intervener, Under St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions First Mortgage", to the United States Circuit Court of Appeals for the Eighth Circuit for the reasons specified in the Assignment of Errors which is filed herewith.

And your petitioners pray further that a citation may be granted directed to the Debtor; to L. W. Baldwin and Guy A. Thompson, as Trustees of the Debtor; to Reconstruction Finance Corporation, intervener; to United States of America, intervener; and to Guaranty Trust Company of
294 New York and Benjamin F. Edwards, as Trustees under the First and Refunding Mortgage of the Missouri Pacific Railroad Company, interveners; commanding them to appear before the said United States Circuit Court of Appeals for the Eighth Circuit, at St. Louis, Missouri, and to do and receive that which may appertain to justice to be done in the premises; and that a transcript of the record and evidence in said proceedings, duly authenticated, may be trans-

mitted to the said United States Circuit Court of Appeals for the Eighth Circuit.

And your petitioners pray that the Court fix the amount of the bond which petitioners shall give on said appeal.

BANKERS TRUST COMPANY
and WILLIAM H. BIXBY,
As Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage Due May 1, 1933,
By Alexander & Green,
Attorneys for Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage Due May 1, 1933, and

JAMES H. McINTOSH,
EDWARD W. BOURNE,
THOMAS W. WHITE,
Attys. for Bankers Trust Co. and W. K. Bixby, Trustees.

July 25, 1934.

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295 (Assignment of Errors on Appeal Allowed by U. S. District Court.)

(Filed July 26, 1934.)

Come now Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage Due May 1, 1933, having made their petition for appeal herein from the order entered herein on July 6, 1934, entitled "On Petitions of Trustees of Debtor and Others, to Construe the Gold Clause in Bonds Pleaded by Bankers Trust Company, Special Intervener, Under St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions First Mortgage", and file the following assignment of errors, upon which they will rely upon the prosecution of this appeal:

1. The Court erred in making its Finding No. (3).
2. The Court erred in making its Finding No. (4).
3. The Court erred in making its Finding No. (5).

4. The Court erred in making its Finding No. (6).

5. The Court erred in making its Finding No. (7).

6. The Court erred in making its Finding No. (8).

7. The Court erred in failing to hold that the so-called
296 "gold clauses" in the Mortgage and Bonds referred to in said decree were intended to and do entitle the obligees to gold coin of the United States of the standard of weight and fineness on May 1, 1903, or to the equivalent thereof if such equivalent could be determined.

8. The Court erred in failing to hold that the equivalent of $1,000 in gold coin of the United States of the standard of weight and fineness on May 1, 1903, could be determined, and was at the time of said decree and still is the number of dollars then and now current obtained by multiplying 1,000 by 25.8 and dividing the same by 15-5/21.

9. The Court erred in failing to hold that the lien of the Mortgage and the amount due on the Bonds issued thereunder could not be discharged except by the payment of the amount of such lien or otherwise pursuant to law.

10. The Court erred in holding that Congress had the power under the Constitution of the United States to enact so much of Public Resolution No. 10, approved June 5, 1933, as purports to provide that every obligation requiring payment in gold or in an amount in money of the United States measured by gold could be discharged upon payment, dollar for dollar, in any coin or currency which at the time of the payment is legal tender for public and private debts.

11. The Court erred in failing to hold that so much of Public Resolution No. 10, approved June 5, 1933, as purports to provide that every obligation requiring payment in gold or in an amount in money of the United States measured by gold could be discharged upon payment, dollar for
dollar, in any coin or currency which at the time of
297 payment is legal tender for public and private debts is in contravention of the Constitution of the United States and particularly the Fifth Amendment thereto.

12. The Court erred in holding that the Trustees and the Bondholders are entitled only to payment of $1,000 upon each Bond in the principal amount of $1,000, validly issued and outstanding, in such lawful money of the United States as is legal tender for the payment of debts, with interest thereon, also in such lawful money of the United States;

and that such payment would extinguish the total amount of both principal and interest due upon said Bonds.

13. The Court erred in holding that any and all amounts payable to the said Mortgage Trustees should be paid to said Trustees in any lawful money of the United States which is legal tender for debts, and that the money so paid should be accepted by said Trustees at the nominal value thereof and in discharge, dollar for dollar, of the face amount of the indebtedness, including interest, to which it may be applied.

14. The Court erred in holding that the claims of the said Trustees and the said Bondholders for payment in gold or its equivalent and for payment in excess of that provided for in said decree should be denied and rejected.

Wherefore, appellants pray that the said decree entered herein on July 6, 1934, be reversed, and that such other and further relief may be given these appellants as may
298 be just and proper.

BANKERS TRUST COMPANY and
WILLIAM H. BIXBY,
As Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage Due May 1, 1933.
By Alexander & Green,
Attorneys for Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage Due May 1, 1933, and
JAMES H. McINTOSH,
EDWARD W. BOURNE,
THOMAS W. WHITE,
Attorneys for Bankers Trust Co. and Wm. K. Bixby, Trustees.

July 25, 1934.

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299 (Order of U. S. District Court Allowing Appeal, etc.)

(Received and Filed July 30, 1934.)

The petition of Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage Due May 1, 1933, for an appeal from the decree en-

tered herein on July 6, 1934, entitled "On Petitions of Trustees of Debtor and Others, to Construe the Gold Clause in Bonds Pleaded by Bankers Trust Company, Special Intervener, Under St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions First Mortgage", is hereby granted, and the appeal to the United States Circuit Court of Appeals for the Eighth Circuit is allowed upon the said Bankers Trust Company and William H. Bixby, as Trustees aforesaid, giving bond as required by law in the sum of $250.

Dated, July 28, 1934.

C. B. FARIS,
United States District Judge.

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300 (Bond on Appeal Allowed by U. S. District Court.)

(Filed July 30, 1934.)

Know All Men By These Presents, That We, Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions First Mortgage Bonds due May 1st, 1933, as Principals and the American Surety Company of New York, a corporation organized and existing under the laws of the State of New York, of No. 100 William Street, Borough of Manhattan, City of New York, as Surety, are held and firmly bound unto Missouri Pacific Railroad Company debtor, L. W. Baldwin and Guy A. Thompson, as Trustees of the Debtor, Reconstruction Finance Corporation, Intervener, United States of America, Intervener, Guaranty Trust Company of New York and Benjamin F. Edwards, as Trustees under the First and Refunding Mortgage of the Missouri Pacific Railroad Company, Interveners, (Obligees) in the full and just sum of Two Hundred Fifty and 00/100 Dollars ($250.00) to be paid to the said Obligees by said Principals, their successors or assigns, to which payment well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, firmly by these presents. Sealed with our seals and dated the 25th day of July, 1934.

Whereas, a Decree was entered in the above entitled cause on the 6th day of July, 1934, entitled "On Petition of Trustees of Debtor and Owners, to construe the Gold Clause in Bonds Pleaded by Bankers Trust Company, Special Intervener, under St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions First Mortgage", and

Whereas, the said Principals have prosecuted an appeal to the United States Circuit Court of Appeals for the Eighth Circuit, from the said decree entered herein.

Now, Therefore, The Condition Of This Obligation Is Such, That if the said Principals shall prosecute said appeal to effect and answer all costs if they fail to make their plea good, then this Obligation to be void, otherwise to remain in full force and effect.

BANKERS TRUST COMPANY,
By Brenton Welling,
Vice President (L. S.)

Attest:
W. C. Meyers,
Assistant Secretary.

WILLIAM H. BIXBY,
By W. B. Dean,
Agent as Trustees aforesaid (L. S.)

(Seal) AMERICAN SURETY COMPANY OF NEW YORK,
By: Leon Sekeson,
Resident Vice President.

Attest:
M. S. Godwin,
(Seal) Resident Assistant Secretary.

Approved:
Faris, J.

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301 (Order Approving Bond Filed in U. S. District Court.)

(Received and Filed July 30, 1934.)

Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage Due May 1, 1933, having presented their appeal bond on their appeal from the decree entered in this cause on the 6th day of July, 1934, it is hereby

Ordered that the said appeal bond be and the same hereby is approved.

July 28, 1934.

C. B. FARIS,
United States District Judge.

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302 (Order Extending Time to File Statement of Evidence and Transcript on Appeal Allowed by U. S. District Court.)

(Filed September 4, 1934.)

Upon application, and for good cause shown, it is ordered that the time for filing the Statement of Evidence and Praecipe in this Court be and the same is hereby extended to and including the first day of October, 1934.

It Is Further Ordered, that the time for filing the Transcript of Record in the United States Circuit Court of Appeals for the Eighth Circuit, be and the same is hereby extended to and including the first day of October, 1934.

C. B. FARIS,
United States District Judge.

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303 Notice of Lodgment of Statement of Evidence.

(Filed Sept. 6, 1934.)

You Are Hereby Notified that the undersigned appellants, Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage, Due May 1, 1933, have lodged their Statement of Evidence in the above matter in accordance with Equity Rule 75 (b), and that they will ask this Honorable Court to approve said Statement of Evidence at 10:00 o'clock A. M., on Monday, September 17, 1934, or as soon thereafter as they may be heard, in Court No. 1 of the United States District Court for the Eastern Division Eastern Judicial District of Missouri.

JAMES H. McINTOSH,
EDWARD W. BOURNE,
THOS. W. WHITE,
Solicitors for Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain & Southern Railway River and Gulf Divisions First Mortgage, Due May 1, 1933.

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304 Received copy of the above notice this 5th day of September, 1934.

RECONSTRUCTION FINANCE CORPORATION, a corporation,
By Max O'Rell Truitt per E. J. B.
Attorneys for the Reconstruction Finance Corporation.

UNITED STATES OF AMERICA,
By Harry C. Blanton and
Angus D. McLean,
Attorneys for United States of America.

GUARANTY TRUST COMPANY OF NEW YORK and BENJAMIN F. EDWARDS, Trustees under the First and Refunding Mortgage of the Missouri Pacific Railroad Company,
By Nagel, Kirby, Orrick & Shepley,
Attorneys for Guaranty Trust Company of New York and Benjamin F. Edwards, Trustees under the First and Refunding Mortgage of the Missouri Pacific Railroad Company.

L. W. BALDWIN and GUY A. THOMPSON, Trustees in Reorganization of the Missouri Pacific Railroad Company,
By Edw. J. White,
Attorney for L. W. Baldwin and Guy A. Thompson, Trustees in Reorganization of the Missouri Pacific Railroad Company.

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305 (Praecipe for Transcript by Bankers Trust Company, et al.)

(Filed September 6, 1934.)

To the Clerk of the United States District Court for the Eastern Judicial District of Missouri, Eastern Division:

You Are Hereby Requested to make a transcript of the record and proceedings had in your Court in the above entitled cause to be filed in the United States Circuit Court of Appeals for the Eighth Circuit, pursuant to an appeal allowed to the undersigned in the District Court of the United States

on July 28, 1934, in the above cause, and to include in such transcript the following:

1. Debtor's Petition, filed March 31, 1933, Petition No. 1.

2. Order approving Debtor's Petition, dated March 31, 1933, Order No. 1.

3. Order concerning filing of claims of creditors, dated May 13, 1933, Order No. 19.

4. Petition of Trustees of First and Refunding Mortgage, filed June 7, 1933. Petition No. 44, (Description of property and all schedules to be omitted as in printed record).

5. Order on Petition of Trustees of First and Refunding Mortgage, dated June 7, 1933, Order No. 44a.

6. Further order on Petition of Trustees of First and Refunding Mortgage, dated June 22, 1933, Order No. 44b.

7. Order confirming appointment of Trustees, filed July 26, 1933, Order No. 57.

8. Petition of Bankers Trust Company and William H.
306 Bixby, as Trustees of the Iron Mountain Mortgage, filed December 27, 1933, Petition No. 173 (Exhibit to be omitted).

9. Order permitting Special Intervention of Bankers Trust Company, dated April 5, 1934, Order No. 173.

10. Answer of Trustees, filed April 10, 1934, Answer No. 173.

11. Petition of Reconstruction Finance Corporation and United States of America for leave to intervene, filed January 25, 1934, Petition No. 175.

12. Order permitting intervention of Reconstruction Finance Corporation, filed April 5, 1934, Order No. 175.

13. Petition of Intervention of United States of America, filed April 11, 1934, Petition No. 176.

14. Order permitting intervention of United States of America, filed April 5, 1934, Order No. 176.

15. Answer of Reconstruction Finance Corporation, Intervener, filed April 9, 1934, Answer No. 173a.

16. Answer of United States of America, Intervener, filed April 28, 1934, Answer No. 173b.

17. Answer of Trustees of First and Refunding Mortgage, filed May 16, 1934, Answer No. 173c

18. Clerk's minutes of the proceedings in this cause on the following dates: December 27, 1933; January 29, 1934; March 24, 1934; April 5, 1934; April 10, 1934; April 28, 1934; May 1, 1934; May 4, 1934; May 18, 1934; May 23, 1934; May 25, 1934; June 20, 1934; June 21, 1934; and July 6, 1934.

19. Opinion of the Court filed June 20, 1934, Opinion 173a.

20. Further order on intervention petition (Sequestration Order) filed June 21, 1934, Order No. 173.

21. Decree on Petitions of Trustees of Debtor and others, filed July 6, 1934, Order No. 173a.

22. Statement of Evidence and order approving same.

23. Copy of St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage, Due May 1, 1933, offered in evidence.

24. Copy of specimen St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage Bond due May 1, 1933, offered in evidence.

25. Petition for appeal.

26. Assignment of Errors.

27. Order allowing appeal, and date thereof.

307 28. Bond, showing approval by Court, and date filed.

29. Order approving bond, and date filed.

30. Order extending time for filing Praecipe, etc., and date thereof.

31. Notice of Lodgment of Statement of Evidence and date filed.

32. Citation.

33. Praecipe, and service thereof on all parties.

BANKERS TRUST COMPANY and
WILLIAM H. BIXBY, As Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage Due May 1, 1933.
By James H. McIntosh,
Edward W. Bourne,
Thos. W. White,
Their Counsel.

St. Louis, Mo.

September ....., 1934.

We hereby agree that the above and foregoing Praecipe is correct; that the records, documents, papers and proceedings therein set forth are sufficient for a complete record in the cause on writ of error and on appeal, and we hereby adopt the foregoing as the list designated by each of the parties to this cause to complete said transcript, and we hereby waive the issuance and service of notice upon any party hereto, and agree that said Praecipe shall be obeyed by and acted upon by the Clerk as fully and to all intents and purposes in the same manner as if said praecipe had been regularly filed, and a true copy thereof served on each party thereto, and we hereby acknowledge due service of citation in this cause.

RECONSTRUCTION FINANCE CORPORATION, a corporation.

By .....

Attorneys for Reconstruction Finance Corporation.

Finance Corporation.

UNITED STATES OF AMERICA,

By .....

Attorneys for United States of America.

GUARANTY TRUST COMPANY OF
308 NEW YORK and BENJAMIN F. EDWARDS, Trustees under the First and Refunding Mortgage of the Missouri Pacific Railroad Company,

By .....

Attorneys for Guaranty Trust Company of New York and Benjamin F. Edwards, Trustees under the First and Refunding Mortgage of the Missouri Pacific Railroad Company.

L. W. BALDWIN and GUY A. THOMPSON, Trustees in Reorganization of the Missouri Pacific Railroad Company.

By .....

Attorney for L. W. Baldwin and Guy A. Thompson, Trustees in Reorganization of the Missouri Pacific Railroad Company.

Copy of the within Praecipe for Record received this fifth day of September, 1934.

HARRY C. BLANTON,
U. S. Atty.,
Of Counsel for United States of America,

EDW. J. WHITE.

Copy of the within Praecipe for record received this fifth day of September, 1934.

MAX O'RELL TRUITT,
NAGEL, KIRBY, ORRICK & SHEPLEY,
Attys. for Guaranty Trust Co. & Benj. F. Edwards, Trustees under 1st & Refunding Mtge. of Missouri Pacific R. R. Co.

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309 (Praecipe for Transcript by Reconstruction Finance Corporation.)

(Filed September 15, 1934.)

To the Clerk of the United States District Court for the Eastern Judicial District of Missouri, Eastern Division:

You Are Hereby Requested, in making up the transcript of record for the United States Circuit Court of Appeals for the Eighth Circuit, in the above entitled cause, to incorporate the following additional portions of the record not requested by the appellants:

(1) Petitions and Orders concerning payment of interest on Iron Mountain Bonds, dated May 4, 1933, September 28, 1933, and April 16, 1934, Petitions and Orders Nos. 15, 86, and 178 (with supplement).

(2) Petition of Reconstruction Finance Corporation, Answer of the Debtor, and Order No. 40, all concerning the temporary appointment of Trustees; and Order No. 45, supplementing Order No. 40.

(3) Answer of Trustees of Debtor to intervening petition of the United States of America, Answer No. 176.

(4) Oral memorandum of the Court on Interveners' motion to amend intervening petition, May 22, 1934.

(5) Clerk's minutes of April 9, 1934, relating to answer of Reconstruction Finance Corporation, and minutes of May 22 and May 24, 1934, relating to oral memorandum of
310 Court on Interveners' Motion to amend intervening petition.

(6) Oral stipulation between counsel for appellant and counsel for trustees of debtor, entered into in the argument of the cause on May 23, 1934, as follows:

"The defendants say that they are willing to admit that a default occurred in the payment of the debt evidenced by the bonds in question, when they became due on the First of May, 1933, and that the face amount of the bonds outstanding in the hands of the public, of this issue, aggregate $34,548,000."

RECONSTRUCTION FINANCE CORPORATION,
STANLEY REED,
C. M. CLAY, Washington, D. C.,
By Max O'Rell Truitt, St. Louis,
Attorney for Reconstruction Finance Corporation.

PAUL FREUND, of Counsel.
GREEN, HENRY & REMMERS,
Of Counsel, St. Louis, Mo.

St. Louis, Missouri, September 14, 1934.

Receipt of service and notice of appellee's additional praecipe for record, hereby acknowledged.

UNITED STATES OF AMERICA,
ANGUS D. MacLEAN,
Asst. Solicitor General, by H. C. B.
By Harry C. Blanton, U. S. Atty.,
Atorneys for United States of America.

GUARANTY TRUST COMPANY OF NEW YORK and
BENJAMIN F. EDWARDS,
Trustees under the First and Refunding Mortgage of the Missouri Pacific Railroad Company,
By Nagel, Kirby, Orrick & Shepley,
Attorneys for Guaranty Trust Company of New York and Benjamin F. Edwards, Trustees under the First and Refunding Mortgage of the Missouri Pacific Railroad Company.

L. W. BALDWIN and
GUY A. THOMPSON,
Trustees in Reorganization of the Missouri Pacific Railroad Company,
By Edw. J. White,
Attorney for L. W. Baldwin and Guy A. Thompson, Trustees in Reorganization of the Missouri Pacific Railroad Company.

311 Solicitors for Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage due May 1, 1933.

By Alexander & Green,

By Fordyce, White, Mayne & Williams,
Solicitors for Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage due May 1, 1933.

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312 Statement of Evidence Under Equity Rule 75.

(Filed Sept. 17, 1934.)

Be It Remembered that in the above-entitled cause there came on for hearing before the above-entitled Court sitting in Bankruptcy on the 25th day of May, 1934, the applications of the Trustees of the Debtor, and Reconstruction Finance Corporation and United States of America, Special Interveners, for a decree herein under Equity Rule 29 for the affirmative relief prayed for in their respective answers to the intervening petition of Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage Due May 1, 1933.

Appearances:

James H. McIntosh, Esq., Edward W. Bourne, Esq., and Thomas W. White, Esq., for Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage.

Edward J. White, Esq., for the Trustee of the Missouri Pacific Railroad Company.

Honorable Stanley Reed, C. M. Clay, Esq., Max O'Rell Truitt, Esq., and Paul A. Freund, Esq., for Reconstruction Finance Corporation.

Honorable Angus D. McLean, for United States of America, Honorable Harry C. Blanton, United States Attorney for United States of America.

It was stated in open Court that the parties had agreed to an order relating to the sequestration of income. This order was duly submitted to the Court and thereafter duly signed, and is Order No. 173 in this cause.

313 A copy of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage was offered in evidence and received without objection.

A specimen St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage Bond was offered in evidence and received without objection.

The said copy of the Mortgage and the said copy of the bond are to be separately printed in full as part of the record on appeal.

It was stipulated that when the principal of the Bonds and Mortgage became due on the 1st day of May, 1933, the same were not paid and a default occurred.

That thereafter, to-wit, on the 20th day of June, 1934, the Court rendered an oral opinion finding the issues joined against the Interveners Bankers Trust Company and William H. Bixby, as Trustees under the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage, and on July 6th, 1934, entered its decree in accordance therewith.

The above and foregoing is all the material evidence introduced at the trial of said cause.

(Prayer of Bankers Trust Company, et al., for Approval of Statement of Evidence.)

Wherefore, Bankers Trust Company and William H. Bixby as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage Due May 1, 1933, pray that the above Statement of Evidence be

settled, approved and allowed by the above-entitled Court as a true, full, correct and complete statement of all the evi-
314 dence taken and given on the trial of said cause for use on the appeal taken to the United States Circuit Court of Appeals for the Eighth Circuit.

JAMES H. McINTOSH,
EDWARD H. BOURNE,
THOS. W. WHITE,
Solicitors for Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage due May 1, 1933.

(Approval of Statement of Evidence by District Judge.)

Statement of Evidence approved this 17th of September, 1934.

C. B. FARIS,
U. S. District Judge.

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315 (Stipulation Relating to Default in Payment of Debt, etc.)

(Filed September 21, 1934.)

It is hereby stipulated by and between the parties hereto that in the hearing of the above cause on May 25, 1934, the following oral stipulation was entered into between Counsel for parties to the cause, as follows:

"The defendants say that they are willing to admit that a default occurred in the payment of the debt evidenced by the bonds in question, when they became due on the first of May, 1933, and that the face amount of the bonds outstanding in the hands of the public of this issue, aggregate $34,548,000."

RECONSTRUCTION FINANCE CORPORATION,
By Max O'Rell Truitt,
Attorney for Reconstruction Finance Corporation.

UNITED STATES OF AMERICA,
By Harry C. Blanton,
Attorney for United States of America.

GUARANTY TRUST COMPANY
OF NEW YORK and
BENJAMIN F. EDWARDS,
Trustee under the First and Refunding Mortgage of the Missouri Pacific Railroad Company,

By Nagel, Kirby, Orrick & Shepley,
Attorneys for Guaranty Trust Company of New York and Benjamin F. Edwards, Trustees under the First and Refunding Mortgage of the Missouri Pacific Railroad Company.

L. W. BALDWIN and
GUY A. THOMPSON,
Trustees in Reorganization of the Missouri Pacific Railroad Company,
By Edw. J. White,
Attorney for L. W. Baldwin and Guy A. Thompson, Trustees in Reorganization of the Missouri Pacific Railroad Company.

316 Solicitors for Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage due May 1, 1933,

By James H. McIntosh, Edward W. Bourne and Thos. W. White,
Solicitors for Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage due May 1, 1933.

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St. Louis, Iron Mountain and Southern Railway Company
to
The Mercantile Trust Company
and
William K. Bixby.
River and Gulf Divisions
First Mortgage,
Dated May 1, 1903,
securing

River and Gulf Divisions First Mortgage Four Per Cent. Thirty-Year Gold Bonds.

Interest payable May 1st and November 1st.

Due May 1, 1933.

Assistant Secretary's File No. 703.

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Indenture, dated the first day of May, in the year Nineteen hundred and three, by and between ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, a consolidated corporation created by and existing under the laws of the States of Missouri and Arkansas (hereinafter called the RAILWAY COMPANY), party of the first part, and THE MERCANTILE TRUST COMPANY, a corporation created by and existing under the laws of the State of New York, and William K. Bixby, a citizen and resident of the City of St. Louis, State of Missouri (hereinafter called the TRUSTEES), parties of the second part:

Parties.*

Lines of Railway heretofore owned and operated by the Railway Company.

WHEREAS, the RAILWAY COMPANY owns and operates a main line of railway extending from St. Louis, in the State of Missouri, through the States of Missouri and Arkansas, to Texarkana, on the boundary line between the States of Arkansas and Texas, together with certain branches, including a branch to Alexandria, in the State of Louisiana, the aggregate length of such main line and branches being about 1428.65 miles; and

Line acquired from the White River Railway Company.

WHEREAS, the RAILWAY COMPANY has acquired and now owns all of the railroad, property, real and personal, rights, privileges and franchises formerly belonging to the White River Railway Company, a corporation of the State of Arkansas,

* The marginal notes are omitted in the original mortgage.

which line of railroad as now constructed connects with the line of railroad owned by the RAILWAY COMPANY at a point at or near Batesville, in the County of Independence, State of Arkansas, and is authorized to be constructed in a generally northwesterly direction through Independence, Izard, Baxter, Marion and Boone Counties in the State of Arkansas to a point on the boundary line between the States of Arkansas and Missouri; thence in a northerly and northwesterly direction through Taney, Stone, Barry, Lawrence and Jasper Counties in the State of Missouri, to a connection with the Lexington and Southern Division of the Missouri Pacific Railway at or near Carthage in said County of Jasper, a total distance of 248 miles, more or less.

320

Lines acquired from the St. Louis Valley Railway.

WHEREAS, the RAILWAY COMPANY has acquired and now owns all of the railroad and property, real and personal, rights, privileges and franchises formerly belonging to the St. Louis Valley Railway, a corporation of the State of Illinois, including a line of railroad extending from East St. Louis to Thebes, with a branch line from Fordyce Station to a point at or near the north boundary line of Williamson County, all in the State of Illinois, a total distance of 145 miles, more or less; also the railroad, constructed and to be constructed, lately purchased and acquired by the St. Louis Valley Railway from St. Louis Valley Transfer Railway, beginning at a point of connection with the line of railway formerly belonging to the St. Louis Valley Railway near the intersection of the Waterloo and East Carondelet Turnpike Road with the late St. Louis Valley Railway, and running thence in a westerly direction to the Mississippi River, a distance of about 4.7 miles, more or less; together with a branch railroad beginning at Lot No. 23 in Prairie Du Pont Commons, and running thence in a northerly direction to a point near the Station of Dupo on the late St. Louis Valley Railway, being about 2.4 miles in length; making a total of 7.2 miles of additional railroad, constructed and to be constructed, all in the County of St. Clair, State of Illinois, formerly owned by the St. Louis Valley Railway, and purchased and acquired by the RAILWAY COMPANY

with the St. Louis Valley Railway before mentioned and described; also a ferry line across the Mississippi River at or near East St. Louis and ferry, terminal and yard facilities and property at or near the City of St. Louis, Missouri, and the Cities of East St. Louis and Thebes, in the State
321 of Illinois; and

Line acquired from the Memphis, Helena and Louisiana Railway Company.

WHEREAS, the RAILWAY COMPANY has acquired and now owns all of the railroad and property, real and personal, rights, privileges and franchises formerly belonging to the Memphis, Helena and Louisiana Railway Company, a corporation of the State of Arkansas, which railroad is authorized to be constructed from a point of connection with the railroad of the RAILWAY COMPANY at or near West Memphis, Crittenden County, Arkansas, in a generally southwesterly and southerly direction following the line of the Mississippi River, through the Counties of Crittenden, St. Francis, Lee, Phillips, Arkansas, Desha and Chicot to the boundary line between the States of Arkansas and Louisiana, a distance of 172 miles, more or less; and

Line acquired from the Memphis, Helena and Louisiana Railroad Company.

WHEREAS, the RAILWAY COMPANY has acquired and now owns all of the railroad and property, real and personal, rights, privileges and franchises formerly belonging to the Memphis, Helena and Louisiana Railroad Company, a corporation of the State of Louisiana, which line of railroad is authorized to be constructed from a point of connection with the railroad formerly belonging to the Memphis, Helena and Louisiana Railway Company on the boundary line between the States of Arkansas and Louisiana in a generally southerly direction to a connection with the Texas and Pacific Railway at or near Clayton, in the State of Louisiana, a distance of 102 miles, more or less; and

Extent of proposed System.

WHEREAS, the lines of railroad constructed and authorized to be constructed as aforesaid, together with the lines of railroad hereinafter provided for, will when completed constitute a system of railroads extending from a point at or near St. Louis, thence by ferry to or near East St. Louis, and thence along the East side of the Mis-

sissippi River to a bridge now being constructed at Thebes, Illinois, and from a point of connection with the said bridge at or near Gray's Point,
322 in the State of Missouri, along the West side of the Mississippi River to a connection with the line of railroad of the Texas and Pacific Railway Company at or near Clayton, Concordia Parish in the State of Louisiana, and also from a point at or near West Memphis to a connection with the line of railroad of The Missouri Pacific Railway Company at or near Carthage, Missouri; and

Securities pledged.

WHEREAS, the RAILWAY COMPANY has acquired $148,000 par value of the First Mortgage bonds, being all of said bonds issued and outstanding, of the Union Railway Company, a corporation of the State of Tennessee, and owning certain terminals, terminal facilities and railroads at or near the City of Memphis, in the State of Tennessee, and desires to provide for the acquisition from time to time of additional First Mortgage bonds of said Union Railway Company as the same are issued, which bonds are issued under a mortgage of said company dated July 23, 1902, to The Mercantile Trust Company, as Trustee, and are part of an authorized issue under said mortgage not exceeding in the aggregate the principal sum of $1,000,000; and

WHEREAS, the RAILWAY COMPANY has acquired $1,000,000 par value of the First Mortgage bonds (being all of said bonds) of the Western Coal and Mining Company, a corporation of the State of Missouri, which bonds bear date May 1, 1903, and by their terms mature on May 1, 1933, and bear interest at the rate of five per cent. per annum and are secured by a mortgage or deed of trust to Edwin G. Merriam, as Trustee, dated April 28, 1903; and

WHEREAS, the RAILWAY COMPANY desires to make provision for the acquisition of additional lands and terminal, ferry and yard facilities at or near the City of St. Louis, in the State of Missouri, and at or near the Cities of East St. Louis and Thebes, in the State of Illinois, and elsewhere; and

323 WHEREAS, the RAILWAY COMPANY desires to make provision for the completion and equipment of

the lines of railroad acquired by it as aforesaid, and the extension, equipment, improvement and permanent betterment of the same, and also desires to provide for the construction or acquisition of additional lines of railroad and for terminals, equipment and other property in connection with or necessary for the development of its railroad and property and the business thereof; and

WHEREAS, the RAILWAY COMPANY desires to make financial provision for the obligations incurred by it in connection with the acquisition of the railroads and property, rights, privileges and franchises hereinbefore described, and for the further construction and extension of said railroads, and for the construction or acquisition of branches and extensions thereof, and for acquiring property in connection therewith; and also desires to make financial provision for the construction or acquisition of other lines of connecting railroad and other property, and for other lawful corporate purposes; and

Resolution of the Board of Directors of the Railway Company authorizing issue of Bonds and execution of mortgage.

WHEREAS, for such purposes the Board of Directors and the stockholders of the RAILWAY COMPANY have duly authorized the creation and issue of Four per cent. bonds to be known as St. Louis, Iron Mountain and Southern Railway Company River and Gulf Divisions First Mortgage Four Per Cent. Thirty-Year Gold Bonds, to be coupon bonds with privilege for registration as to principal and exchangeable for fully registered bonds without coupons, or both coupon bonds and registered bonds without coupons, the coupon bonds to be dated the first day of May, 1903, and all such coupon bonds and registered bonds to be payable on the first day of May, 1933, and to bear interest at the rate of four per cent. per annum, payable semi-annually on the first days of May and November in each year (interest on the coupon bonds to date from May 1st, 1903), and both principal and interest being payable in the City of New York in gold coin of the United States of the
324 present standard of weight and fineness and without deduction for United States, State, County or Municipal taxes which the RAILWAY COMPANY may be required to pay thereon or to retain therefrom under any present or future law; the total

issue of said bonds for all purposes to be limited to the aggregate principal sum of $50,000,000 and all of said bonds to be equally secured by a mortgage or deed of trust to The Mercantile Trust Company, a corporation of the State of New York and William K. Bixby, a citizen and resident of St. Louis, State of Missouri, as TRUSTEES, constituting a first lien upon all the railroad, constructed, in process of construction and hereafter to be constructed, property and franchises, obligations, stocks, bonds and other securities, branches, extensions, additions and other property specifically described in and conveyed by said mortgage or deed of trust, as well as all other property of every kind and description constructed or acquired by the RAILWAY COMPANY by the use of said bonds or which may from time to time be expressly transferred, assigned or mortgaged by the RAILWAY COMPANY or by any one in its behalf to the TRUSTEES of said mortgage; and

Bonded indebtedness not in excess of authorized capital stock.

WHEREAS, the bonded indebtedness of the RAILWAY COMPANY, including that to be secured by this Indenture, does not exceed in the aggregate the amount of its authorized capital stock; and

Denomination of Bonds.

WHEREAS, the bonds to be secured by this Indenture are to be coupon bonds of the denomination of $1,000, numbered consecutively from one upwards and registered bonds, to be designated as such on their face, of the denomination of $1,000 and such multiples thereof as the RAILWAY COMPANY from time to time, by resolution of its Board of Directors or Executive Committee, may authorize; every such registered bond bearing some distinctive number or designation, and all coupon bonds and registered bonds respectively to be substantially of the following tenor:

325

[FORM OF COUPON BOND.]

No. $1,000.

UNITED STATES OF AMERICA.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY.

RIVER AND GULF DIVISIONS FIRST MORTGAGE FOUR PER CENT. THIRTY-YEAR GOLD BOND.

Form of Coupon Bond.

St. Louis, Iron Mountain and Southern Railway Company (hereinafter termed the RAILWAY COMPANY), for value received, promises to pay on

the first day of May, one thousand nine hundred and thirty-three, at its office or agency in the City of New York, to the bearer, or, if this bond be registered, then to the registered holder hereof, One Thousand Dollars gold coin of the United States of the present standard of weight and fineness, and to pay interest thereon from May 1st, 1903, until the payment of this bond, at the rate of four per cent. per annum, such interest being payable at said office or agency in like gold coin semi-annually on the first days of May and November in each year, but only upon surrender for cancellation of the respective coupons for such interest hereto annexed. Both the principal and interest of this bond are payable without deduction for any tax or taxes which the RAILWAY COMPANY may be required to pay thereon or to retain therefrom under or by reason of any present or future law of the United States, or of any State, County or Municipality therein.

This bond is one of a series of coupon and registered bonds of the RAILWAY COMPANY known as St. Louis, Iron Mountain and Southern Railway Company River and Gulf Divisions First Mortgage Four Per Cent. Thirty-Year Gold Bonds,
326 duly authorized and approved by the Board of Directors and by the Stockholders of the RAILWAY COMPANY, to an amount not exceeding in the aggregate the principal sum of Fifty Million Dollars at any one time outstanding, all of which bonds are issued and to be issued under and in pursuance of and are equally secured by a mortgage or deed of trust dated May 1st, 1903, executed by the RAILWAY COMPANY to The Mercantile Trust Company, a corporation of the State of New York, and William K. Bixby, a citizen and resident of the City of St. Louis, State of Missouri, as TRUSTEES, of all the property and franchises described in said mortgage or deed of trust, to which reference is hereby made for a description of the property and franchises mortgaged or pledged, the nature and extent of the security, the rights of the holders of said bonds under the same, and the terms and conditions under which said bonds are issued and secured and are to be used.

If default shall be made in the payment of any semi-annual installment of interest on this bond, when the same shall become due and be demanded, and such installment shall remain unpaid for six months after such demand, the principal of this bond may become due and payable in the manner provided in said mortgage or deed of trust. This bond shall pass by delivery unless registered in the name of the owner on the books of the RAILWAY COMPANY at its office or agency in the City of New York, such registration being noted on the bond by the RAILWAY COMPANY. After such registration no transfer shall be valid unless made on said books by the registered holder in person or by attorney duly authorized and similarly noted on the bond; but the same may be discharged from registration by being transferred to bearer, and thereupon transferability by delivery shall be restored; but this bond may again from time to time be registered or transferred to bearer as before. Such registration, however, shall not affect the negotiability of the coupons, which shall continue to
327 be transferable by delivery. The holder of this bond may at his option surrender the same for cancellation, with all unmatured coupons thereto attached or appertaining, in exchange for a registered bond without coupons as provided in said mortgage or deed of trust. No recourse in any event shall be had for the payment of the principal or interest of this bond against any stockholder, director or officer of the RAILWAY COMPANY. This bond shall ~~not be valid~~ unless authenticated by the certificate endorsed hereon, executed by The Mercantile Trust Company, or its successor, as one of the TRUSTEES under said mortgage or deed of trust.

In Witness Whereof, St. Louis, Iron Mountain and Southern Railway Company has caused these presents to be signed by its President, or one of its Vice-Presidents, and its corporate seal, attested by its Secretary or one of its Assistant Secretaries, to be hereto affixed as of the first day of May, A. D. 1903, and the annexed interest coupons

to be executed with the engraved signature of its Treasurer.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY,
By
President.

Attest:

Secretary.

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328 [FORM OF REGISTERED BOND.]

No. $

UNITED STATES OF AMERICA.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY.

RIVER AND GULF DIVISIONS FIRST MORTGAGE FOUR PER CENT. THIRTY YEAR REGISTERED GOLD BOND.

Form of Registered Bond.

St. Louis, Iron Mountain and Southern Railway Company (hereinafter termed the RAILWAY COMPANY), for value received, promises to pay to
or registered assigns
on the first day of May, one thousand nine hundred and thirty-three, at its office or agency in the City of New York,
thousand dollars gold coin of the United States of the present standard of weight and fineness, and to pay interest thereon from the first day of May or November as the case may be, next preceding the date of this bond, until the payment of this bond, at the rate of four per cent. per annum, such interest being payable at said office or agency in like gold coin, semi-annually on the first days of May and November in each year. Both the principal and interest of this bond are payable without deduction for any tax or taxes which the RAILWAY COMPANY may be required to pay thereon or to retain therefrom under or by reason of any present or future law of the United States or of any State, County or Municipality therein.

This bond is one of a series of coupon and registered bonds of the RAILWAY COMPANY known as St. Louis, Iron Mountain and Southern Railway

Company River and Gulf Divisions First Mortgage Four Per Cent. Thirty Year Gold Bonds duly authorized and approved by the Board of Directors and by the Stockholders of the RAILWAY COMPANY to an amount not exceeding in the aggregate the principal sum of Fifty Million Dollars at any one time outstanding, all of which bonds are
329 issued and to be issued under and in pursuance of and are equally secured by a mortgage or deed of trust dated May 1st, 1903, executed by the RAILWAY COMPANY to The Mercantile Trust Company, a corporation of the State of New York, and William K. Bixby, a citizen and resident of the City of St. Louis, State of Missouri, as TRUSTEES of all the property and franchises described in said mortgage or deed of trust, to which reference is hereby made for a description of the property and franchises mortgaged or pledged, the nature and extent of the security, the rights of the holders of said bonds under the same, and the terms and conditions under which said bonds are issued and secured and are to be used.

If default shall be made in the payment of any semi-annual installment of interest on this bond when the same shall become due and be demanded, and such installment shall remain unpaid for six months after such demand, the principal of this bond may become due and payable in the manner provided in said mortgage or deed of trust. This bond is transferable by the registered holder thereof in person or by attorney duly authorized, upon the books of the RAILWAY COMPANY at its office or its agency in the City of New York, upon surrender for cancellation of this bond, and a new registered bond will be issued to the transferee in exchange therefor, or, at the request of the transferee a new coupon bond with coupons attached, maturing on and after the then next ensuing interest due date on this bond, will be issued for each $1,000 of the principal of this bond, as provided in said mortgage or deed of trust, and on payment, if the RAILWAY COMPANY shall so require, of the transfer fee therein provided for. No recourse in any event shall be had for the payment of the principal or interest of this bond against any stockholder, director or officer of the RAILWAY COMPANY. This bond shall not be valid unless authenticated

by the certificate endorsed hereon executed by The Mercantile Trust Company or its successor as one of the TRUSTEES under said mortgage or deed of trust.

330 IN WITNESS WHEREOF, St. Louis, Iron Mountain and Southern Railway Company has caused these presents to be signed by its President, or one of its Vice-Presidents, and its corporate seal, attested by its Secretary or one of its Assistant Secretaries, to be hereto affixed this day of , 19 .

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY,
By
President.

Attest:
Secretary.

AND WHEREAS, there shall be annexed to said coupon bonds at the time of the issue thereof coupons representing the semi-annual interest instalments which may become due thereon, which coupons shall be substantially in the following form:

[FORM OF COUPON.]

No. $20.

Form of interest coupon.

On the first day of St. Louis, Iron Mountain and Southern Railway Company will pay to the bearer, at its office or financial agency in the City of New York, Twenty dollars in United States gold coin without deduction for taxes, being the semi-annual interest then due on its River and Gulf Divisions First Mortgage Four Per Cent. Thirty-Year Gold bond No.

Treasurer.

Style of Treasurer's Signature.

AND WHEREAS, each of the coupons to be attached to said coupon bonds shall be authenticated by the engraved fac-simile of the signature of the present Treasurer or of any future Treasurer of the RAILWAY COMPANY, it being intended that the RAILWAY COMPANY may take and use for that purpose the engraved fac-simile of the signature

of any person who shall have been such Treasurer notwithstanding the fact that he may have ceased
331 to be such Treasurer at the time when such bonds shall be actually certified and delivered, or when such coupons shall be attached to the bonds; and

Date of Bonds

WHEREAS, said bonds shall be signed on behalf of the RAILWAY COMPANY as of the date of the same by its present or any future President and Secretary, or by one of its present or future Vice-Presidents and Assistant Secretaries; and

WHEREAS, there shall be endorsed upon each of the coupon bonds and registered bonds secured hereby a certificate of The Mercantile Trust Company, one of the TRUSTEES hereunder, or of its successor appointed hereunder, that such bond is one of a series of bonds herein described, and no bond shall be valid or obligatory for any purpose until such certificate shall have been executed by the said TRUSTEE, such certificate to be substantially in the following form:

[FORM OF TRUSTEE'S CERTIFICATE.]

Form of Trustee's Certificate.

This bond is one of a series of bonds described in the within mentioned mortgage or deed of trust executed by St. Louis, Iron Mountain and Southern Railway Company to the undersigned and William K. Bixby as TRUSTEES.

THE MERCANTILE TRUST COMPANY,

Trustee.

By

President.

Action by the Stockholders of the Railway Company.

AND WHEREAS, at a meeting of the stockholders of the RAILWAY COMPANY held on the 30th day of April, 1903, pursuant to notice duly given as required by law, the holders of more than ninety per cent. of the entire issued and outstanding capital stock of the RAILWAY COMPANY concurred to, consented to and authorized the increase of the bonded indebtedness of the RAILWAY COMPANY by the issue of the bonds hereby secured, and the execution of this Indenture, and also assented to and approved of the acquisition of the railroads, property and franchises hereby mortgaged or pledged;
332 and

Authorization by Board of Directors of the Railway Company.

WHEREAS, the execution and delivery of this Indenture in the form hereof and the issue as herein provided of the series of coupon and registered bonds hereby secured have been duly authorized and approved by the Board of Directors of the RAILWAY COMPANY, and in pursuance of all and every legal power and authority in it vested, the RAILWAY COMPANY has executed this Indenture and proposes from time to time to execute and issue such bonds;

Now, Therefore, this Indenture Witnesseth:

That, in order to secure the payment of the principal and interest of all such bonds at any time issued and outstanding under this Indenture, according to their tenor and effect, and the performance of all the covenants and conditions herein contained, and in consideration of the premises and of the purchase and acceptance of such bonds by the holders thereof and of the sum of One Dollar to it duly paid by the TRUSTEES, at or before the ensealing or delivery of these presents, the receipt whereof is hereby acknowledged, the RAILWAY COMPANY, party of the first part, has executed and delivered these presents, and has granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred and set over, and by these presents does grant, bargain, sell, alien, remise, release, convey, confirm, assign, transfer and set over unto the TRUSTEES, parties of the second part, their successors and assigns forever,

Granting Clause.

All and singular the following lines of railroad of the RAILWAY COMPANY, party hereto of the first part, constructed and to be constructed namely:

Description of Mortgaged premises.

All and singular the main line of railroad formerly belonging to the St. Louis Valley Railway constructed and authorized to be constructed, beginning at a point in or near the City of East St. Louis in St. Clair County in the State of Illinois and extending thence, through said St. Clair County and through and into the Counties of
333 Monroe, Randolph, Jackson, Union and Alexander to a point at or near the City of Cairo in Alexander County in said State; the portion of railroad now actually constructed extending from East St.

Louis in St. Clair County, Illinois, southwesterly and southeasterly through St. Clair County and through the Counties of Monroe, Randolph, Jackson and Union and extending into the County of Alexander to a connection with the bridge approach and bridge tracks of the Southern Illinois and Missouri Bridge Company, at or near Thebes in said County of Alexander; and extending from Fordyce Station in Jackson County, Illinois, in a northeasterly direction via the City of Murphysboro through Jackson and Williamson Counties to the North line of Williamson County;

Also the railroad, constructed and to be constructed, lately purchased and acquired by the St. Louis Valley Railway from the St. Louis Valley Transfer Railway, beginning at a point of connection with the line of railway formerly belonging to the St. Louis Valley Railway near the intersection of the Waterloo and East Carondelet Turnpike Road with the late St. Louis Valley Railway, and running thence in a westerly direction to the Mississippi River, a distance of about 4.7 miles, more or less; together with a branch railroad beginning at Lot No. 23 in Prairie Du Pont Commons, and running thence in a northerly direction to a point near the Station of Dupo on the late St. Louis Valley Railway, being about 2.5 miles in length; making a total of 7.2 miles of additional railroad, constructed and to be constructed, all in the County of Clair, State of Illinois, formerly owned by the St. Louis Valley Railway, and purchased and acquired by the RAILWAY COMPANY with the St. Louis Valley Railway before mentioned and described, with ferry and transfer properties and facilities on the banks of and across the Mississippi River to yards, terminals and ferry facilities upon the west bank of said Mississippi River.

All and singular the main line of railroad formerly belonging to the Memphis, Helena and Louisi-
334 ana Railway Company constructed and to be constructed, beginning at a point on the Memphis branch of the Railway Company in the County of Crittenden, State of Arkansas, and extending thence in a generally southwesterly and southerly direction through the Counties of Crittenden, St.

Francis, Lee, Phillips, Arkansas, Desha and Chicot, all in the State of Arkansas, to a point on the boundary line between the States of Arkansas and Louisiana.

All and singular the main line of railroad formerly belonging to the Memphis, Helena and Louisiana Railroad Company constructed and to be constructed, beginning at a point of connection with the line of railroad owned by the Railway Company and formerly belonging to the Memphis, Helena and Louisiana Railway Company on the boundary line between the States of Arkansas and Louisiana and running thence in a southerly direction through the parishes of East Carroll, Madison, Tensas and Concordia to a point of connection with the railroad of the New Orleans and Northwestern Railroad Company near Clayton in the said parish of Concordia and State of Louisiana.

All and singular the line of railroad formerly belonging to the White River Railway Company, constructed and to be constructed from a point at or near Batesville, Independence County, State of Arkansas, on the White River branch of the RAILWAY COMPANY and extending in a generally northwesterly direction through the Counties of Independence, Izard, Baxter, Marion and Boone in the State of Arkansas to a point on the boundary line between the States of Arkansas and Missouri, thence in a northerly and northwesterly direction through the counties of Taney, Stone, Barry, Lawrence and Jasper in the State of Missouri to a connection with the Lexington and Southern Division of the Missouri Pacific Railway at or near the City of Carthage in said County of Jasper.

Also, all railroads, lines of railroads, extensions and branches, together with all lands, equipment,
335 property, rights and franchises connected therewith, or with the use and operation thereof, and all other property, real and personal, of whatever kind or description which may be constructed or acquired by the use of bonds or proceeds of bonds issued hereunder as in this Indenture provided.

INCLUDING, ALSO, any and all roadbed, superstructure, rights of way, rails, tracks, sidetracks,

bridges, viaducts, buildings, depots, stations, warehouses, car-houses, engine-houses, freight-houses, coal-houses, wood-houses, machine-shops and other shops, turn-tables, water-stations, fences, docks, ferries, ferry and transfer equipment, structures, erections and fixtures, and all other things of whatever kind, now owned or hereafter acquired by the RAILWAY COMPANY or its successors in any wise and at any time belonging or appertaining to or provided for use upon or in connection with any line of railway, extension, branch or other property now owned by the RAILWAY COMPANY or hereafter acquired by it and subject to the lien of this Indenture; and any and all lands designed for depots, warehouses or other structures at any terminus, or on or along any line of railway, extension or branch now or at any time hereafter subject to the lien hereof, but not including any lands outside of the right of way, depot grounds, terminal and other facilities and not necessarily appurtenant to the use and operation of said railway, its extensions, branches and other property subject to the lien of this Indenture; and any and all locomotives, engines, cars and other rolling stock, equipment, machinery, instruments, tools, implements, materials, furniture and other chattels, wheresoever situated, now or hereafter held, acquired, or provided for use upon any line of railway, extension or branch now or hereafter, subject to the lien hereof, and any and all leaseholds, leases, rights under leases, or contracts, trackage agreements or operating arrangements, covenants and agreements, terms or parts of terms, including the right to use the bridge of the Southern Illinois and Missouri Bridge Company across the Mississippi River between Thebes, Illinois, and Gray's Point, Missouri, and any and all other property, real and personal, of every kind and description, now owned or hereafter acquired by the RAILWAY COMPANY for use upon, or in connection with, or for the purposes of, any such line of railway, extension or branch, now or at any time subject to the lien hereof; and any and all corporate or other rights, privileges and franchises which the RAILWAY COMPANY now has, or which the RAILWAY COMPANY or its successors hereafter shall acquire, possess or exercise, for, or appertaining to,

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the construction, maintenance, use or operation of any and all lines of railway, extensions and branches and any part thereof, which are now or hereafter may become subject to the lien of this Indenture; and any and all the rents, issues, profits, tolls and other income of all lines of railway, extensions and branches, and any part thereof, which are now or may hereafter become subject to the lien hereof, and any and all the rights, privileges, franchises, properties, real or personal, rights and things which the RAILWAY COMPANY now owns or hereafter shall possess, or become entitled to possess, for the purpose of, or in connection with, any such line of railway, extension or branch now or hereafter subject to the lien of this Indenture;

Also the following-described bonds owned by the RAILWAY COMPANY, which bonds have at or before the time of the execution of this Indenture been deposited and pledged with the Trust Company as part of the security hereunder, namely:

$148,000, par value, of the First Mortgage bonds of the Union Railway Company, a corporation of the State of Tennessee; and

$1,000,000 par value, of the First Mortgage bonds of the Western Coal and Mining Company, a corporation of the State of Missouri.

337 ALSO ANY AND ALL OTHER PROPERTY of any kind, including bonds and other securities, claims and stocks which, from time to time hereafter, may be expressly conveyed and mortgaged, or delivered, or by writing of any kind assigned or transferred by the RAILWAY COMPANY or by any one with its consent in its behalf, to the TRUSTEES, or either of them, hereunder; the TRUSTEES being hereby authorized, with the consent or approval of the RAILWAY COMPANY, at any and all times to receive any such property as and for additional security for the bonds issued and to be issued hereunder and to hold and apply any and all such property subject to the trusts of this Indenture: *Provided, however,* and it is hereby expressly covenanted and declared, that any conveyance, mortgage, assignment or transfer, pursuant to the provisions of this clause of any prop-

erty not acquired by the use of bonds or proceeds of bonds issued hereunder as and for additional security, may be made subject to any reservations, limitations, conditions and provisions which shall be set forth in an instrument in writing, then executed by the TRUSTEES or by the TRUST COMPANY and by the RAILWAY COMPANY, respecting the use, management and disposition of such additional property or the proceeds thereof;

And it is hereby covenanted and agreed that The Mercantile Trust Company, one of the TRUSTEES hereunder, or any Trustee which shall be appointed its successor in the trust hereunder, shall receive and shall retain as one of the TRUSTEES hereunder the sole custody and possession of all bonds and other securities and the certificates for all stocks and also all moneys which the TRUSTEES or either of them shall at any time become entitled to receive or possess hereunder.

TOGETHER WITH all the right, title, estate, interest and property which the RAILWAY COMPANY now has, or at any time hereafter may acquire, in or to any of the franchises, lines of railway, extensions, branches, and other properties, real, personal or mixed, hereby mortgaged, conveyed and assigned, or intended so to be.

338 AND IT IS COVENANTED AND DECLARED, that all railroads, franchises, rolling stock, stocks, bonds or other securities and property of every kind and description and any interest therein which, by any covenant or provision of this Indenture, the RAILWAY COMPANY has subjected, or agreed to subject, to the lien hereof, shall immediately when acquired by the RAILWAY COMPANY, and subject to the terms and conditions of such acquisition and without any further conveyance, assignment or delivery become and be subjected to the lien of this Indenture as fully and completely as though now owned by the RAILWAY COMPANY and expressly and specifically conveyed and embraced in the granting clauses of this Indenture; but the RAILWAY COMPANY covenants and agrees that at any and all times it will execute and deliver any and all further conveyances thereof and instruments of further assurance to the TRUSTEES, as the TRUSTEES or either of them may reasonably direct or

require for the purpose of expressly and specifically subjecting the same to the lien of this Indenture.

But it is hereby covenanted and declared that the RAILWAY COMPANY reserves the right, except as in this Indenture expressly otherwise provided, to acquire or construct any railroad, branch or extension and to acquire any stocks, bonds, securities and other property of any kind or description free from the lien of this Indenture; and any railroad, branch or extension and any stocks, bonds, securities and other property of any kind or description acquired by the RAILWAY COMPANY without the use of bonds or proceeds of bonds issued hereunder, or constructed or acquired by the use of any such bonds or the proceeds of any such bonds as may be delivered to the RAILWAY COMPANY as hereinafter provided in reimbursement of expenditures then already made out of other resources for any purpose for which bonds are hereinafter provided to be issued, shall be free from the lien of this Indenture unless specifically subjected thereto by an instrument in writing executed by the RAILWAY COMPANY or by any one
339 with its consent in its behalf to the TRUSTEES hereof.

Habendum. *To have and to hold* all and singular the said railroads, premises, property, real or personal, franchises, rights, estates, lands, appurtenances, stocks, bonds and other securities hereby conveyed and mortgaged, or intended so to be, unto the TRUSTEES, as joint tenants and not as tenants in common, their successors and assigns forever.

But the aforesaid grants are in trust, nevertheless, for the equal and proportionate benefit and security of all holders of the bonds and coupons issued and to be issued under and secured by this Indenture, and for the enforcement of the payment of said bonds and interest when payable according to their tenor, purport and effect, and to secure the performance and observance of and compliance with the covenants and conditions of this Indenture, without preference, priority or distinction as
Grant in Trust. to lien or otherwise of one bond over any other bond by reason of priority in the issue, sale or negotiation thereof, or of the purpose of their issue, so

that each and every bond issued as aforesaid shall have the same right, lien and privilege under and by virtue of this Indenture and so that the principal and interest of every such bond shall, subject to the terms hereof, be equally and proportionately secured hereby as if all had been duly issued, sold and negotiated simultaneously with the execution and delivery of this Indenture, it being intended that the lien and security of this Indenture shall take effect from the date of the execution and delivery hereof, without regard to the time of actual issue, sale or negotiation of said bonds, as though upon such date all of said bonds were actually issued, sold and delivered to and in the hands of holders thereof for value.

And it is covenanted and declared that all such bonds, with the coupons for interest thereon, are to be issued, certified and delivered, and that the
340 mortgaged premises are to be held by the TRUSTEES subject to the further covenants, conditions, uses and trusts hereinafter set forth, and it is hereby covenanted and agreed between the parties hereto, as follows, viz.:

Article First.

GENERAL PREREQUISITES TO ISSUE.

The bonds to be issued under and secured by this Indenture, together with the interest coupons pertaining thereto, shall be of substantially the tenor and purport above recited.

To bear Trust Company's Certificate.

Only such bonds as shall bear thereon endorsed a certificate substantially in the form hereinbefore recited, executed by THE MERCANTILE TRUST COMPANY (or its successor) one of the TRUSTEES hereunder, shall be secured by this Indenture or entitled to any lien, right or benefit hereunder; and such certificate of the TRUST COMPANY upon any such bond executed by the RAILWAY COMPANY shall be conclusive evidence that the bond so certified has been duly issued hereunder and that the holder is entitled to the benefit of the trust hereby created.

Matured Coupons to be canceled.

Before certifying or delivering any bond, all coupons thereon then matured shall be cut off, cancelled and delivered to the RAILWAY COMPANY; and the TRUST COMPANY shall not certify or deliver any registered bond bearing interest from a date more

than six months prior to such certification or delivery.

Authorized issue limited to $50,000,000.

The amount of the bonds hereby secured which may be executed by the RAILWAY COMPANY and which may be certified by the TRUST COMPANY is limited so that there shall never at any time be outstanding under this Indenture bonds for an aggregate principal sum exceeding Fifty Million Dollars ($50,000,000).

Temporary printed or lithographed bonds authorized.

Until the said coupon and registered bonds intended to be secured hereby can be engraved and prepared the RAILWAY COMPANY may execute and deliver printed or lithographed bonds, registered or negotiable by delivery, substantially of the tenor of
341 the bonds hereinbefore recited, except that no coupons shall be attached to said bonds; and the same may be for the payment of One thousand dollars ($1,000), or any multiple thereof, as the RAILWAY COMPANY shall determine. All such printed or lithographed bonds shall be dated May 1st, 1903, and shall bear upon their face the words "Temporary St. Louis Iron Mountain and Southern Railway Company River and Gulf Divisions First Mortgage Four Per Cent. Thirty Year Gold Bond," and shall be certified by the TRUST COMPANY in the same manner as the bonds hereinbefore described, and such certificate shall be conclusive evidence that the bond so certified has been duly issued hereunder, and that the owner thereof is entitled to the benefit of the trust hereby created. Such printed or lithographed bonds shall be exchangeable for engraved bonds to be issued hereunder, and, upon any such exchange, such printed or lithographed bonds shall be forthwith canceled by the TRUST COMPANY and delivered to the RAILWAY COMPANY for destruction. Until so exchanged, the said printed or lithographed bonds shall in all respects be entitled to the lien and security of these presents as bonds issued and certified hereunder, and interest when and as payable shall be paid and (except when registered) endorsed thereon. As long as any temporary bonds are outstanding a corresponding amount in face value of engraved bonds shall be withheld from certification by the TRUST COMPANY.

Trust Company shall certify and deliver all bonds issued hereunder, as provided in Article Second of this Indenture and not otherwise.

All temporary or engraved bonds to be secured hereby shall from time to time be executed and be delivered by the RAILWAY COMPANY to the TRUST COMPANY for certification, and thereupon the TRUST COMPANY shall certify and deliver the same, as provided in ARTICLE SECOND of this Indenture, and not otherwise. On request of the RAILWAY COMPANY the TRUST COMPANY shall so certify such bonds and shall deliver the same pursuant to the provisions of said ARTICLE SECOND, whether or not such delivery shall be in advance of the registration or recording of this Indenture.

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Article Second.

PURPOSES AND CONDITIONS OF ISSUE.

$1,000,000 reserved for the acquisition of the First Mortgage Bonds of the Union Railway Company.

SECTION 1. Of the bonds authorized to be issued under and secured by this Indenture, bonds in the aggregate principal amount of $1,000,000 shall be reserved to be certified and issued for the acquisition of First Mortgage Bonds of the Union Railway Company of Memphis. Bonds reserved under this Section in the principal amount of $148,000 shall immediately upon the execution and delivery of this Indenture be certified by the TRUST COMPANY and delivered to the RAILWAY COMPANY or upon its order.

Whenever the RAILWAY COMPANY shall deliver or cause to be delivered to the TRUST COMPANY any additional First Mortgage Bonds of the said Union Railway Company with all unmatured coupons thereunto belonging, the TRUST COMPANY shall thereupon receive the same and shall certify and deliver to the RAILWAY COMPANY or upon its order, an amount of bonds issued hereunder, and reserved under this Section, equal to the par amount of the First Mortgage Bonds of the said Union Railway Company so delivered to and received by it.

$7,200,000 to be issued immediately upon the execution of this Indenture as applicable to the acquisition of the railroad and property formerly belonging to the St. Louis Valley Railway.

SECTION 2. Of the bonds authorized to be issued under and secured by this Indenture, bonds in the aggregate principal amount of $7,200,000 shall immediately upon the execution and delivery hereof be certified by the TRUST COMPANY and delivered to the RAILWAY COMPANY or upon its order as applicable to, and representing the value of, the railroad and other property, including ferry and terminal

properties, hereby mortgaged and conveyed and formerly belonging to the St. Louis Valley Railway.

SECTION 3. Of the bonds authorized to be issued under and secured by this Indenture, bonds in the aggregate principal amount of $15,700,000, shall be reserved to be executed, certified and delivered only in the manner and for some one or more of the purposes in this Section stated, namely:

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$15,700,000 reserved to be issued for the acquisition, completion and extension of the lines of railroad formerly belonging to the White River Railway Company, the Memphis, Helena and Louisiana Railway Company and the Memphis, Helena and Louisiana Railroad Company.

The acquisition and the completion and extension of the lines of railroad hereinbefore described, formerly belonging to the White River Railway Company, the Memphis, Helena and Louisiana Railway company and the Memphis, Helena and Louisiana Railroad Company.

The restrictions subject to which the bonds reserved under this section shall be certified and delivered by the TRUST COMPANY and may be used are as follows, namely:

The amount of bonds reserved under this Section, which may be certified and delivered by the TRUST COMPANY and used by the RAILWAY COMPANY, shall never exceed in the aggregate $30,000 par value, for each completed mile of main line of the railroads in this Section mentioned (not including side-tracks and passing-tracks), which shall have been constructed or acquired by the RAILWAY COMPANY and which shall have been subjected to the lien of this Indenture as a first and paramount lien thereon.

Conditions governing issue.

The bonds reserved under this Section shall be certified and delivered from time to time by the TRUST COMPANY subject to the same restrictions and in the same manner as provided in Section 8 of this Article with reference to the issue of bonds reserved under said Section 8.

Unused bonds to become part of the reservation of bonds under Sec. 6 of this Article.

In case, after the completion of the lines of railroad referred to in this Section any of the bonds hereby secured and reserved under this Section shall remain unissued, such bonds remaining unissued shall thereafter be released from the restrictions in this Section contained and shall be certified by the TRUST COMPANY and delivered to the RAILWAY COMPANY for the purposes and subject to the restrictions contained in Section 6 of this Article.

A certificate signed by the President or a Vice-President and by the Chief Engineer of the RAILWAY COMPANY to the effect that said lines of rail-
344 road have been so completed, which certificate shall contain a description of said completed line or lines of railroad, shall be received by the TRUST COMPANY as conclusive evidence of the facts therein stated and shall be full authority and protection to the TRUST COMPANY in the premises.

$2,175,000 reserved to construct a second or double track along the line formerly belonging to the St. Louis Valley Railway.

SECTION 4. Of the bonds authorized to be issued under and secured by this Indenture bonds in the aggregate principal amount of $2,175,000, shall be reserved to be executed, certified and delivered for the purpose of the construction of a second or double track along the line of railroad of the RAILWAY COMPANY formerly owned by the St. Louis Valley Railway, which line of railroad is hereinbefore described and hereby mortgaged.

The amount of bonds reserved under this section which may be certified and delivered by the TRUST COMPANY and used by the RAILWAY COMPANY shall never exceed in the aggregate $15,000 par value for each completed mile of second or double track along the line of railroad in this Section mentioned and said bonds shall be certified and delivered by the TRUST COMPANY upon the terms and conditions set forth and contained in Section 8 of this Article.

Unused bonds to become part of the reservation of bonds under Sec. 6 of this Article.

Whenever the RAILWAY COMPANY shall by resolution of its Board of Directors or Executive Committee, a certified copy of which resolution shall be delivered to the TRUST COMPANY, certify and state that the bonds reserved under this section or such portion of said bonds as may then remain unissued, are no longer required for the purposes in this Section mentioned, the TRUST COMPANY shall release said bonds from the terms and conditions of this Section, and thereupon said bonds shall be held by the TRUST COMPANY subject to all the terms and conditions in Section 6 of this Article set forth and shall be certified from time to time as in said Section 6 provided.

SECTION 5. Of the bonds authorized to be issued
345 under and secured by this Indenture bonds in the aggregate principal amount of $2,500,000 shall be

$2,500,000 reserved to acquire terminal and ferry property, equipment and facilities at or near St. Louis, Missouri, and East St. Louis and Thebes, Illinois.

reserved to be executed, certified and delivered for the purpose of acquiring additional terminal and ferry properties and equipment and terminal and ferry facilities, or the capital stock and mortgage bonds, if any, of any company or companies owning or controlling such properties, equipment and facilities, at or near the City of St. Louis, State of Missouri, and at or near the cities of East St. Louis and Thebes in the State of Illinois, and appurtenant to or used in connection with the lines of railroad of the RAILWAY COMPANY subject to the lien of this Indenture.

The restrictions subject to which the bonds reserved under this Section shall be certified and delivered from time to time by the TRUST COMPANY and may be used, are as follows, viz.:

Before certifying and delivering any such bonds reserved under this Section, there shall be delivered to the TRUST COMPANY, a certificate signed by the President or a Vice-President and by the Treasurer, or Auditor of the RAILWAY COMPANY, stating and certifying

Certificate of President or a Vice-President and Treasurer or Auditor of the Railway Company required.

(a) The expenditures made by the RAILWAY COMPANY for which reimbursement is desired out of the proceeds of such bonds, and a description of the terminal and ferry properties, equipment and facilities acquired or constructed, and the amount expended therefor.

(b) A description of any bonds and shares of stock of any other company which have been acquired by the RAILWAY COMPANY and the cost thereof and a description of the terminal and ferry properties, equipment and facilities owned or controlled by such company.

(c) That none of the expenditures so certified were included in any certificate furnished to the TRUST COMPANY under any provision of this Indenture, and that the RAILWAY COMPANY has not been reimbursed therefor by the use of any bonds secured by this Indenture of the proceeds of any bonds or out of any funds under this Indenture.

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(d) The actual price for which the RAILWAY COMPANY has sold or agreed to sell the

bonds called for by said certificate or, in the event that it has not agreed to sell the same, the average market price of said bonds during the calendar month previous to the date of said certificate upon the New York Stock Exchange, or in the event of no sale upon said Exchange during said month, then the price (but not less than the price at which the bonds immediately issuable hereunder are sold) for which the last sale of bonds issued under this Indenture has been made by the RAILWAY COMPANY;

Certificate of Chief Engineer required.

Together with such certificate there shall be delivered to the TRUST COMPANY a certificate of the Chief Engineer of the RAILWAY COMPANY containing a description of the terminal and ferry properties equipment and facilities referred to in the certificate above provided for and such instruments and conveyances as may be necessary to vest in the TRUSTEES upon the trusts of this Indenture, title to the terminal properties and facilities so acquired or constructed by the RAILWAY COMPANY and all bonds and certificates, assigned in blank for transfer, for all shares of stock so acquired, and the opinion of counsel of the RAILWAY COMPANY to the effect that such instruments and conveyances are sufficient for that purpose, or the opinion of said counsel that no such instruments or conveyances are necessary.

Title to property to be satisfactorily vested in the Trustees.

Full authority and protection to the Trust Company.

Upon the receipt by the TRUST COMPANY of said certificates and other instruments, the TRUST COMPANY shall forthwith certify and deliver to the RAILWAY COMPANY, or upon its order, such an amount of bonds issued hereunder and reserved under the provisions of this Section as will, when taken at the price stated in said certificate, be equal to the amount in said certificate certified to be the actual cost of the terminal properties, facilities and equipment or of the stock and bonds therein stated to have been constructed or made or acquired by the RAILWAY COMPANY. Such certificates and opinions shall be full authority and protection to the TRUST COMPANY for its certification of bonds under the foregoing provisions of this Section.

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$4,500,000 reserved to extend, develop and equip the system of railroads subject to the lien of this Indenture.

SECTION 6. Of the bonds authorized to be issued under and secured by this Indenture bonds in the aggregate principal amount of $4,500,000, together with such portion of the bonds authorized to be issued under and secured by this Indenture and reserved under the provisions of Sections 3 and 4 of this Article as may be released from the terms and restrictions of said Sections 3 and 4 as therein provided, shall be reserved to be certified by the TRUST COMPANY, and delivered to the RAILWAY COMPANY, or upon its order, but only for the following purposes or some one or more of them, and subject to the following restrictions, namely:

The purposes for which said bonds or their proceeds may be used are:

The construction or acquisition of second or double tracks, shops, depots, terminal properties, rolling stock and equipment and other additional property, real or personal, upon, along or appurtenant to or for use in connection with the lines of railroad, branches, extensions, terminal or ferry properties belonging to the RAILWAY COMPANY and subject to the lien of this Indenture at the time of such construction or acquisition, or belonging to any other company, all of whose mortgage bonds, if any, and all of whose outstanding capital stock (less the number of shares necessary to qualify directors) shall be subject to the lien of this Indenture; and the development and improvement of any of the railroads, branches, extensions, terminal or ferry properties, rolling stock, equipment, shops, depots or other property hereby mortgaged or conveyed, or which hereafter shall be constructed or acquired by the RAILWAY COMPANY and subjected to the lien of this Indenture, or which shall belong to any other company, all of whose mortgage bonds, if any, and all of whose outstanding capital stock (less the number of shares necessary to qualify directors) shall be subject to the lien of this Indenture and be held by the TRUST COMPANY, such development and improvements to include the fencing and ballasting of track not previously fenced or ballasted, and the substitution of steel or iron for wooden viaducts, trestles and bridges.

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Any such construction, acquisitions, developments and improvements may be made by and in the name of the RAILWAY COMPANY or by or for account of any other company described in this paragraph.

The restrictions subject to which bonds reserved under this section shall be certified and delivered from time to time by the TRUST COMPANY and may be used are as follows, viz.:

Certificate of the President or a Vice-President and Treasurer or Auditor required.

Before certifying and delivering any of the bonds reserved under this Section for any of the purposes therein specified, there shall be delivered to the TRUST COMPANY a certificate or certificates signed by the President or a Vice-President and by the Treasurer or Auditor of the RAILWAY COMPANY, certifying:

(A) The expenditures for which reimbursement is desired out of the proceeds of such bonds, indicating the amount and class of betterments or improvements made, and the shops, depots, terminal properties, rolling stock and equipment and other additional property constructed or acquired, and the amount actually expended for each and every such purpose; and

(B) That none of the expenditures so certified were included in any previous certificate furnished to the TRUST COMPANY under this Section, or under any other provision of this Indenture, and that the Company making such expenditures has not been reimbursed therefor out of any other funds provided by this Indenture; and

(C) The price at which the RAILWAY COMPANY has sold or agreed to sell the bonds called for by said certificate, or in the event that it has not agreed to sell the same, then the average price
349 upon the New York Stock Exchange during the previous calendar month of the bonds secured by this Indenture, or, in the event of no sale upon said Exchange during said month, then the price (but not less than the price at which the bonds immediately issuable hereunder are sold) for which the last sale of bonds issued under this Indenture has been made by the RAILWAY COMPANY.

Title to property to be satisfactorily vested in the Trustees.

Together with the certificate hereinbefore required by the provisions of this Section there shall be delivered to the TRUST COMPANY such instruments and conveyances as may be necessary to vest in the TRUSTEES, subject to the lien of this Indenture as a first and paramount lien thereon, any property so acquired or constructed by the RAILWAY COMPANY, and the opinion of counsel of the RAILWAY COMPANY to the effect that such instruments and conveyances are sufficient for that purpose, or the opinion of said counsel that no such instruments or conveyances are necessary.

All Equipment acquired by the use of bonds hereunder to be plainly marked: "River and Gulf Divisions First Mortgage Equipment."

In the event the certification of any bonds reserved under this Section of this Article is required for the purpose of providing for the purchase of equipment, the certificate above provided for shall contain a description of the equipment so purchased or to be purchased giving the character and numbers of such cars, locomotives, ferry or other equipment as may be specified in said certificate, and all of such equipment shall be plainly marked with the words "River and Gulf Divisions First Mortgage Equipment." The title to all equipment purchased by the use of bonds secured by this Indenture or the proceeds of such bonds shall be taken in the name of the RAILWAY COMPANY and shall belong to it and shall be subjected to the lien of this Indenture as a first and paramount lien thereon.

The TRUST COMPANY thereupon shall certify and deliver to the RAILWAY COMPANY or upon its order such an amount of bonds reserved under this section of this Article as will, when taken at
350 the price of such bonds, as specified in the certificate of the RAILWAY COMPANY, be equal to the amount of such expenditures as stated in said certificate. Such certificate and opinion shall be full authority and protection to the TRUST COMPANY for its certification of bonds under the foregoing provisions of this Section.

$5,675,000 reserved to construct and acquire lines of railroad constituting connecting lines between certain lines of railroad subject to the lien of this Indenture.

SECTION 7. Of the bonds authorized to be issued under and secured by this Indenture, bonds in the principal amount of $5,675,000, shall be reserved to be executed, certified and delivered for the purpose of constructing or acquiring lines of railroad, or the acquisition of all the mortgage bonds, if any, and all of the outstanding capital stock (except shares necessary for the qualification of

directors) of any company or companies owning such lines of railroad constituting connecting lines which shall be subject to this Indenture, as a first and paramount lien thereon.

1. Between the line of railroad formerly owned by the St. Louis Valley Railway and that formerly owned by the Memphis, Helena and Louisiana Railway Company, both of which lines are now owned by the RAILWAY COMPANY and are subject to the lien of this Indenture; and

2. Between a point at or near West Memphis on the line of railroad formerly owned by the Memphis, Helena and Louisiana Railway Company and a point at or near Batesville on the line of railroad formerly owned by the White River Railway Company, both of which lines are now owned by the RAILWAY COMPANY and are subject to the lien of this Indenture.

Conditions governing Issue.

The bonds reserved under the provisions of this section shall be issued in the same manner and subject to the same restrictions as provided in Section 8 of this Article with reference to the issue of bonds reserved under said Section 8.

Unused bonds to become part of the reservation of bonds under Sec. 8 of this Article.

In case after the completion of said connecting lines of railroad any part of the bonds reserved under this Section then remain unissued, the RAILWAY COMPANY may by resolution of its Board of Directors require the TRUST COMPANY to release, and the TRUST COMPANY shall thereupon release from the operation of this Section said bonds reserved thereunder or such portion of them as may then remain unissued, and said bonds when so released shall fall into and become subject to all of the provisions of Section 8 of this Article.

$11,250,000 reserved to construct and equip lines of railroad constituting extensions or branches of the system of railroads subject to the lien of this Indenture

SECTION 8. The remaining $11,250,000 par value of the bonds authorized to be issued under and secured by this Indenture, together with such portion of the bonds authorized to be issued under and secured by this Indenture, and reserved under the provisions of Section 7 of this Article, as may be released from the terms and restrictions of said Section 7, as therein provided, shall be reserved to be executed by the RAILWAY COMPANY and to be certified and delivered by the TRUST COMPANY and to be used by the RAILWAY COMPANY

from time to time for some one or more of the following purposes, but only as hereinafter provided and subject to the restrictions hereinafter in this Section stated, viz.:

The purposes for which such bonds or their proceeds may be used are:

(*a*) The construction or acquisition and equipment by the RAILWAY COMPANY of lines of railroad constituting extensions or branches connecting with the railroad of the RAILWAY COMPANY subject to the lien of this Indenture at the time of such construction or acquisition, or connecting with the railroad of any other company all of whose outstanding mortgage bonds, if any, and all of whose outstanding capital stock (less the number of shares necessary to qualify directors) shall at the time of such construction or acquisition be owned by the RAILWAY COMPANY and deposited with the TRUST COMPANY hereunder.

(*b*) The acquisition of all the mortgage bonds, if any, and all of the outstanding capital stock (less the number of shares necessary to qualify directors) of any company or companies owning any such extension or branch line.

352 (*c*) The construction or acquisition of extensions and branch lines by any company all the mortgage bonds, if any, and all of the outstanding capital stock of which (less the number of shares necessary to qualify directors) shall at the time of such construction or acquisition be subject to the lien of this Indenture and be held by the TRUST COMPANY.

All such railroad constructed or acquired shall either be constructed or acquired by the RAILWAY COMPANY and be subjected to this Indenture as a first and paramount lien thereon or shall be constructed or acquired by any other company all the mortgage bonds, if any, and all the shares of the capital stock of which (less the number of shares necessary to qualify directors) shall be subject to the lien of this Indenture and be held by the TRUST COMPANY.

The restrictions subject to which bonds reserved under this Section shall be certified and

delivered from time to time by the TRUST COMPANY, and may be used, are as follows, viz.:

Conditions governing issue.

The amount of bonds reserved under this section which may be certified and delivered by the TRUST COMPANY and used by the RAILWAY COMPANY shall never exceed in the aggregate $30,000 par value, for each completed mile of main line of railroad (not including side-tracks and passing tracks), and not to exceed in the aggregate $15,000, par value, for each completed mile of branch line of railroad constructed or acquired by the RAILWAY COMPANY and which shall have been conveyed and mortgaged to the TRUSTEES hereunder free from any prior lien, charge or encumbrance, and at the same rates respectively for each mile of main line or branch line owned, constructed or acquired by any other Company or Companies, all of the mortgage bonds, if any, and all of the outstanding capital stock of which (except the number of shares necessary to qualify directors) shall have been acquired by the RAILWAY COMPANY and shall have been pledged and deposited with the TRUST COMPANY hereunder.

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Certificate of the President or a Vice-President and Treasurer or Auditor of the Railway Company required.

Before certifying and delivering any such bonds there shall be delivered to the TRUST COMPANY a certificate, signed by the President or a Vice-President and by the Treasurer or Auditor of the RAILWAY COMPANY, stating and certifying.

(a) A description of the line of railroad, speciying whether the same is main line or branch line, and the number of completed miles thereof which have been constructed or acquired by the RAILWAY COMPANY and the actual cost thereof, and that such railroad is free from any lien, charge or incumbrance prior to the lien of this Indenture except undetermined claims incidental to construction.

(b) A description of any bonds and shares of stock of any other company which have been acquired by the RAILWAY COMPANY and the cost thereof and of the completed miles of main line or branch line of railroad of such company, and, also, that such bonds and shares of stock are all the outstanding bonds, and all the shares of the outstanding capital

stock (except the number of shares required to qualify directors) of such company.

(c) A description of the completed miles of main line or branch line railroad constructed or acquired and owned by any such other company, all of the bonds and shares of capital stock of which (except as aforesaid) shall then be held by the TRUST COMPANY.

(d) That none of the expenditures made on account of any construction or acquisition on account of which the RAILWAY COMPANY requests the certification and delivery of bonds hereunder were included in any previous certificate furnished under any Section of this Indenture and that the RAILWAY COMPANY has not been reimbursed therefor out of any funds under this Indenture.

(e) The actual price for which the RAILWAY COMPANY has sold or agreed to sell the
354 bonds called for by said certificate or, in the event that it has not agreed to sell the same, the average market price of said bonds during the calendar month previous to the date of said certificate upon the New York Stock Exchange, or in the event of no sale upon said Exchange during said month, then the price (but not less than the price at which the bonds immediately issuable hereunder are sold) at which the last sale of bonds issued under this Indenture was made by the RAILWAY COMPANY.

Certificate of Chief Engineer required.

Together with such certificate there shall be delivered to the TRUST COMPANY a certificate of the Chief Engineer of the RAILWAY COMPANY, containing a description of the line or lines of railroad mentioned and referred to in the certificate above provided for, and stating the number of completed miles of said railroad, and such instruments and conveyances as may be necessary to vest in the TRUSTEES, subject to the lien of this

Title to property to be satisfactorily vested in Trustees.

Indenture as a first and paramount lien thereon, any line of railroad so acquired and constructed, and all bonds and certificates, assigned in blank for transfer, for all shares of stock so acquired,

and the opinion of counsel of the RAILWAY COMPANY to the effect that such instruments and conveyances are sufficient for that purpose, or the opinion of said counsel that no such instruments or conveyances are necessary.

Full authority and protection guaranteed to the Trust Company.

Upon receipt by the TRUST COMPANY of such certificate and other instruments, the TRUST COMPANY shall forthwith certify and deliver to the RAILWAY COMPANY or upon its order, such an amount of bonds issued hereunder and reserved under the provisions of this Section as will, when taken at the price stated in said certificate, be equal to the amount in said certificate certified to be the cost of the line of railroad therein stated to have been acquired or constructed or of the bonds and shares of stock therein stated to have been acquired. Such certificates and opinion shall be full authority and protection to the TRUST COMPANY for its certification of bonds, under the foregoing provisions of this Section.

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Certain property free from the operation and lien of this Indenture.

SECTION 9. Any bonds certified and delivered under any provision of this Indenture in reimbursement of expenditures then already made by the RAILWAY COMPANY out of other resources, and the proceeds of said bonds, may be used by the RAILWAY COMPANY for any corporate purpose, and any property constructed or acquired by the RAILWAY COMPANY by the use of bonds certified and delivered in reimbursement of expenditures as aforesaid, or the proceeds of said bonds, shall be free from the lien of this Indenture.

Coupon Bonds exchangeable for registered bonds.

SECTION 10. Whenever any coupon bond or bonds issued hereunder, together with all unmatured coupons thereto belonging, shall be surrendered for exchange for registered bonds, the RAILWAY COMPANY shall execute, and the TRUST COMPANY shall certify and, in exchange for such coupon bond or bonds, shall deliver a like amount in registered bonds, without coupons. Such registered bonds shall be for $1,000, or for such multiples of $1,000 as the RAILWAY COMPANY from time to time, by resolution of its Board of Directors or Executive Committee, may prescribe, and shall bear interest at the same rate as the surrendered coupon bonds, and from the date of the last matured coupon thereof.

Registered bonds exchangeable for coupon bonds.

The registered holder of any registered bond or bonds may at his option at any time surrender the same to the RAILWAY COMPANY for cancellation, and receive in exchange therefor a like amount of the principal thereof in coupon bonds.

Transfer of Registered bonds.

Whenever any registered bond or bonds shall be surrendered, transferred and cancelled, the RAILWAY COMPANY shall execute and the TRUST COMPANY shall certify and shall deliver to the transferee a like amount of new registered bonds without coupons.

For any exchange of coupon bonds for registered bonds, or registered bonds for coupon bonds,
356 or for any transfer of registered bonds without coupons, the RAILWAY COMPANY, at its option, may make a charge sufficient to reimburse it for any stamp tax or other governmental charge required to be paid, and, in addition, the sum of one dollar for each new registered or coupon bond issued upon such exchange or transfer.

Lost, mutilated or destroyed bonds.

In case any coupon bond issued hereunder with the coupons thereto appertaining, or any registered bond without coupons, shall become mutilated or be destroyed, the RAILWAY COMPANY, in its discretion, may issue, and thereupon the TRUST COMPANY shall certify and deliver a new bond of like tenor and date (including coupons in case of a coupon bond) bearing the same serial number, in exchange and substitution for, and upon cancellation of, the mutilated coupon bond and its coupons, or the mutilated registered bond, or in lieu of, and substitution for, the coupon bond and its coupons or the registered bond so destroyed, upon receipt of evidence satisfactory to the RAILWAY COMPANY of the destruction of such coupon bond and its coupons, or of such registered bond, and upon receipt also of indemnity satisfactory to the RAILWAY COMPANY, and the RAILWAY COMPANY may charge for the issue of such new bond an amount sufficient to reimburse the RAILWAY COMPANY for the expense incurred by it in the issue of such new bond.

Provisions for benefit of parties hereto and bondholders hereunder.

SECTION 11. Nothing in this Article, or any other Article of this Indenture, expressed or implied, is intended, or shall be construed, to give to any person or corporation, other than the parties

hereto and the holders of bonds issued under and secured by this Indenture, any legal or equitable right, remedy or claim, under or in respect of this Indenture, or under any covenant, condition or provision herein contained; all its covenants, conditions and provisions being intended to be, and being, for the sole and exclusive benefit of the said
357 parties and of the holders of the bonds hereby secured.

Article Third.

Covenants of the Railway Company.

To pay principal and interest.

Section 1. The Railway Company covenants and agrees that it will duly and punctually pay or cause to be paid the principal and interest of every bond issued hereunder and secured hereby all in gold coin of the United States of America of or equal to the present standard of weight and fineness, at the dates and place and in the manner mentioned in such bond, or in the coupons thereto appertaining, without any deduction from either principal or interest for any tax or taxes which the Railway Company may be required to pay thereon or to retain therefrom under or by reason of any present or futue law of the United States or of any State, County or Municipality therein. The interest on coupon bonds shall be payable only upon surrender for cancellation of the respective coupons annexed to said bonds as such coupons respectively mature, and when and as paid, all coupons shall forthwith be cancelled.

Without deduction for any taxes.

To keep an office in City of New York where bonds and coupons may be presented for payment.

The Railway Company covenants and agrees that at all times until the payment of the principal of the bonds secured by this Indenture, it will keep an office or agency in the City of New York, where bonds and coupons may be presented for payment and where notices or demands in respect of said bonds and coupons may be served, and from time to time will give written notice to the Trustees of the place of such office or agency. In case the Railway Company shall fail to do so, presentation and demand may be made and notices served at the office of the Trust Company in the City of New York.

To keep the property covered by this Indenture free from any lien for taxes.

Section 2. Exclusively for the benefit of the holders of bonds issued hereunder, the Railway Company covenants and agrees that from time to time it will duly pay and discharge all taxes, as-

sessments and governmental charges (the lien of which would be prior or superior to the lien of this
358 Indenture) lawfully imposed upon the railroads, franchises, stocks, bonds and other property hereby mortgaged, pledged or assigned, or upon any part thereof, or upon the income or profits thereof, and also all taxes, assessments and governmental charges lawfully imposed upon the lien or interest under this Indenture of the TRUSTEES, or of the holders of the bonds hereby secured, in respect of the railroads and franchises, stocks, bonds and other property, subject to this Indenture, so that the lien and priority of this Indenture shall be fully preserved at the cost of the RAILWAY COMPANY without expense to the TRUSTEES or to the bondholders, and, if any company all of whose bonds and outstanding capital stock (less the number of shares necessary to qualify directors) shall have been acquired and pledged hereunder, at any time while such bonds and stock of such company shall be pledged hereunder, shall fail to pay any tax, assessment or charge lawfully imposed upon the property or franchises of such company or upon the income and profits thereof, then the RAILWAY COMPANY either will forthwith pay or cause the same to be paid, or will forthwith
Proviso. acquire and transfer to the TRUSTEES or the TRUST COMPANY the claim therefor; *provided, however,* that nothing in this section contained shall require the RAILWAY COMPANY to pay, acquire or make provision for any such tax, assessment or charge so long as in good faith the validity thereof shall be contested.

Not to extend the time for the payment of any claims for interest.

SECTION 3. In order to prevent any accumulation after maturity of coupons or of claims for interest upon registered bonds, the RAILWAY COMPANY agrees and covenants that it will not, directly or indirectly, extend or assent to the extension of the time for payment of any coupon or claim for interest upon any bond secured hereby, and that it will not, directly or indirectly, be a party to or approve any such arrangement by purchasing or funding such coupons or claims for interest upon registered bonds or in any other manner. In
359 case the time for payment of any such coupon or claim for interest shall be so extended, whether or not such extension be by or with the consent of

the RAILWAY COMPANY, such coupon or claim for interest shall not be entitled, in case of default hereunder, to the benefit or security of this Indenture, except subject to the prior payment in full of the principal of all bonds issued hereunder then outstanding, and of all matured coupons and claims for interest on such bonds, the payment of which has not been so extended.

To keep mortgaged premises in good working order and repair.

SECTION 4. The RAILWAY COMPANY covenants and agrees at all times to maintain, preserve and keep the mortgaged property and every part thereof, with the rolling stock, fixtures and appurtenances, and every part and parcel thereof, in thorough repair and working order and condition and supplied with motive power, rolling stock and equipment, and that it will from time to time make all needful and proper repairs, renewals, replacements, additions, betterments and improvements, so that the traffic and business thereof and every part thereof shall at all times be conducted with safety and expedition.

Not to suffer the creation of any lien prior hereto.

SECTION 5. The RAILWAY COMPANY covenants and agrees that this Indenture will always be kept and maintained to the extent that it now is, and may from time to time become, a valid lien upon all the railroad and appurtenances described and conveyed in the granting clause hereof, and upon all renewals, betterments and improvements thereto; that it will not voluntarily create, or suffer to be created, any debt, lien or charge which would be prior to the lien of these presents upon any property which shall have become subject to this Indenture or any part thereof, or upon the income thereof; and within three months after the same shall accrue it will pay or cause to be discharged, or will make adequate provision to satisfy and discharge all lawful claims and demands for labor,
360 materials, supplies or other objects, which, if unpaid, might by law be given precedence to this Indenture as a lien or charge upon such property or any part thereof or the income thereof; and if any company, all of whose bonds and outstanding capital stock (less the number of shares necessary to qualify directors) shall be subject to this Indenture shall voluntarily create or suffer to be created any additional lien or charge upon its prop-

erty or income, or shall create or shall suffer to be created any additional indebtedness other than indebtedness to the RAILWAY COMPANY, or indebtedness for the current expenses of such company, then the RAILWAY COMPANY will at once acquire such lien, charge or indebtedness and cause the same to be vested in the TRUSTEES, or the TRUST COMPANY, or will cause the same to be paid or discharged; *provided* that nothing in this section contained shall require the RAILWAY COMPANY to acquire or cause to be paid or discharge or make provision for any such debt, lien or charge so long as the validity thereof in good faith shall be contested.

Proviso.

To provide for the registration of bonds.

SECTION 6. The RAILWAY COMPANY covenants and agrees that at an office or agency to be maintained by it in the City of New York, or at some bank or trust company in said city, it will keep books for the registry of bonds issued hereunder, which books, at all reasonable times, shall be open to inspection by the TRUSTEES, and that, upon presentation for such purpose, the RAILWAY COMPANY will, under such reasonable regulations as it may prescribe, register therein the ownership of all registered bonds without coupons issued under this Indenture and any coupon bonds which shall be presented for that purpose.

Regulations of registration and transfer.

Upon presentation to the bond registrar or transfer agent at the place where such books of registry are kept of any coupon bond which shall have been registered as aforesaid and delivery of a written instrument of transfer, in a form approved by the RAILWAY COMPANY, executed by the registered holder for the time being, such bond shall be transferred upon such register. The registered holder of any coupon bond shall also have the right to cause the same to be registered as payable to bearer, in which case transferability by delivery shall be restored, and thereafter the principal of such bond shall be payable to any person presenting the same; but any such coupon bond registered as payable to bearer may be registered again in the name of the holder with the same effect as in the case of a first registration thereof. Successive registrations and transfers as aforesaid may be made, from time to time, as desired. Each reg-

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Registered coupon bonds may be discharged from registry.

istration shall be noted by the bond registrar or transfer agent of the RAILWAY COMPANY on the bond.

Transfer of registered bonds.

Any registered bond without coupons may be transferred at said office or agency by surrender of such bond to said bond registrar or transfer agent for cancellation, accompanied by the delivery of a written instrument of transfer in a form approved by the RAILWAY COMPANY, duly executed by the registered holder for the time being, and by payment of any charge imposed under Section 10 of Article Second hereof; and thereupon a new registered bond, or new registered bonds, for an equivalent aggregate principal sum, shall be issued to the transferee or transferees, as provided in said Section 10 of Article Second.

Exchange of registered bond for coupon bond or bonds.

Whenever any registered bond shall be surrendered for a coupon bond or bonds, the RAILWAY COMPANY shall issue and the TRUST COMPANY shall certify and deliver, in exchange for such registered bond, a like amount of the principal thereof, in coupon bonds with coupons attached maturing on and after the next date on which the interest would have become due on such surrendered registered bond. The numbers of the coupon bonds so to be issued shall correspond with the numbers of any coupon bonds theretofore exchanged for registered bonds.

Registration of coupon bond not to restrain negotiability of coupons.

Registration of any coupon bond, however, shall not restrain the negotiability of any coupon thereto belonging, but every such coupon shall continue to pass by delivery merely, and shall remain payable to bearer.

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Covenants of further assurance.

SECTION 7. Whenever demanded by the TRUSTEES, or by the TRUST COMPANY, the RAILWAY COMPANY will grant, convey, confirm, assign, transfer and set over unto the TRUSTEES the estate, right, title and interest of the RAILWAY COMPANY in or to all real or personal estate, corporate rights and franchises which, in any way or manner, it shall acquire as appurtenant to, or for use upon, the railroad hereby mortgaged, or any railroad or property which hereafter shall become subject to the lien of this Indenture; and it will also do, execute, acknowledge and deliver all and

every such further acts, deeds, transfers and assurances for the better assuring, conveying and confirming unto the TRUSTEES all and singular the premises, estates and property hereby conveyed, or intended so to be, or which the RAILWAY COMPANY has herein covenanted or agreed hereafter to convey or mortgage to the TRUSTEES, as the TRUST COMPANY shall reasonably require for better accomplishing the provisions and purposes of this Indenture, and for securing payment of the principal and interest of the bonds intended to be hereby secured.

Stocks and bonded indebtedness of Companies all of whose stock and bonds are pledged hereunder not to be increased, except as herein provided.

SECTION 8. Except as in this Indenture expressly authorized the RAILWAY COMPANY will not by its affirmative vote or consent, or by abstaining from voting, sanction or permit any increase of the capital stock of any company, all of whose outstanding capital stock (less the number of shares necessary to qualify directors) now is or hereafter shall be subject to this Indenture, or the creation of any indebtedness of any such company (except current accounts growing out of operation), or the issue or the guaranty of any bonds by any such company, or the creation of any mortgage or other lien upon the railroad or property of any such company unless effective provision be made that such indebtedness and the evidences thereof and such bonds issued or guaranteed and such mortgage or other lien and all such additional stock shall forthwith, upon the issue or creation thereof, be transferred to the TRUST COMPANY, by it to be
363 held subject to all the trusts of this Indenture; and all such additional stock shall be fully paid and non-assessable.

To preserve the security represented by pledged stocks.

Except as in this Indenture expressly authorized, the RAILWAY COMPANY will not, by its affirmative vote or consent, or by abstaining from voting, sanction or permit any company all of whose outstanding capital stock (less the number of shares necessary to qualify directors) now is or hereafter may be subject to the lien of this Indenture to sell or otherwise to dispose of or lease (unless such lease be upon the express condition that it shall terminate at the election of the TRUSTEES or of the TRUST COMPANY in case any default shall be made and shall continue as provided in Section

1 of ARTICLE FIFTH hereof) any railroad or bridge belonging to such company, or any property required for the operation thereof, except to the RAILWAY COMPANY or to some other company all of whose outstanding capital stock, except as aforesaid, shall then be held by the RAILWAY COMPANY, and be subject to the lien of this Indenture.

Certain claims and indebtedness to become subject to the lien of this indenture.

SECTION 9. Any and all claims or indebtedness, except claims or indebtedness arising out of current traffic, operating and other incidental obligations, which the RAILWAY COMPANY hereafter may acquire against any other company, all of whose outstanding capital stock, except as aforesaid, now is, or hereafter shall be, subject to this Indenture, shall (subject to the provisions in respect thereof in this Indenture contained) be and become subject to the lien of this Indenture, and if and when requested in writing by the TRUSTEES or by the TRUST COMPANY the RAILWAY COMPANY will execute to the TRUSTEES appropriate assignments thereof.

To use the bonds hereby secured for the purposes herein prescribed.

SECTION 10. The RAILWAY COMPANY will not issue, negotiate, sell, hypothecate or dispose of any bonds hereby secured in any manner other than in accordance with the provisions of this Indenture and the agreements in that behalf herein contained; and, in issuing, selling, hypothecating, negotiating or otherwise disposing of such bonds, from time to time, it will well and truly apply, or cause to be applied, the same, or the proceeds thereof, only to and for some one or more of the purposes in this Indenture prescribed.

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To preserve unencumbered stock hereby pledged.

SECTION 11. Except subject to the lien hereof, or as herein otherwise expressly provided, the RAILWAY COMPANY will not sell, encumber, or by any voluntary act, part with its ownership of or title to any shares of stock of any company which shall have been pledged or assigned hereunder, or its equity of redemption therein, or the voting power thereon.

Article Fourth.

PROVISIONS RELATING TO PLEDGED SECURITIES.

Bonds may be stamped.

SECTION 1. THE MERCANTILE TRUST COMPANY (one of the TRUSTEES) is authorized to cause any and all coupon bonds which at any time may be

delivered to it as security under any of the provisions of this Indenture, to be stamped "Not negotiable. Held by The Mercantile Trust Company as TRUSTEE under the St. Louis, Iron Mountain and Southern Railway Company River and Gulf Divisions First Mortgage."

Railway Company entitled to interest and dividends on pledged securities.

SECTION 2. It is hereby expressly agreed that while and so long as there shall be no default in the payment of the principal or interest of any of the bonds secured hereby, or unless the RAILWAY COMPANY shall have voluntarily surrendered possession of the mortgaged premises as herein authorized, the stocks, bonds or other securities which may be subject hereto, shall be registered in the name of the RAILWAY COMPANY or its nominee or nominees, and the TRUST COMPANY shall detach and deliver to the RAILWAY COMPANY all coupons, as the same may mature upon all bonds deposited and pledged under this Indenture. And said TRUST COMPANY shall execute and deliver to the RAILWAY COMPANY, upon the written order of
365 its President or a Vice-President, such orders or assignments as may be necessary in order to enable the RAILWAY COMPANY to receive and collect any payments made for or on account of the interest of any other obligations deposited or pledged with said TRUST COMPANY hereunder as part of the security hereof, and so long as the RAILWAY COMPANY shall not be in default hereunder as aforesaid, and shall not have surrendered possession as aforesaid, the RAILWAY COMPANY shall have the right to vote upon all shares of stock pledged hereunder for any and all purposes not inconsistent with the provisions and purposes of this Indenture, and with the same force and effect as though such pledge had not been made but subject to the restrictions and agreements herein contained.

Principal or any sum paid on account of the principal of any bond pledged hereunder may be used by the Railway Company for any purposes mentioned in Article Second hereof.

SECTION 3. In case, while and so long as there shall be no default hereunder, any sum shall be paid on account of the principal of any bond or other obligations at any time held by the TRUST COMPANY subject to the lien of this Indenture, or in case any sum shall be paid on account of the interest on any such bonds or obligations out of the proceeds of the property covered by any mort-

gage or other indenture securing such bonds or obligations, or in case upon the dissolution or liquidation of any Company any sum shall be paid upon any shares of stock of such company pledged hereunder, or upon any obligations or claims subject to this Indenture, then in such case any such sum shall be collected and received by the TRUST COMPANY and shall by it be paid over to the RAILWAY COMPANY for any of the purposes for which bonds may be issued hereunder as provided in Article Second of this Indenture, and subject to all the terms and conditions stated in said Article.

Trustee to deliver for cancellation the obligations of any Company the title to all of whose property has been acquired by the Railway Company.

SECTION 4. In the event that the RAILWAY COMPANY shall at any time acquire title to all of the property of any company or companies, all of whose capital stock (less the number of shares necessary to qualify directors), mortgage bonds and other obligations are owned by it and are pledged and deposited with the TRUST COMPANY under this Indenture, the TRUST COMPANY shall, upon the written request of the President or a Vice-President of the RAILWAY COMPANY, and upon conveyance and assignment to the TRUSTEES hereunder of the property so acquired by the RAILWAY COMPANY, deliver such stock to the RAILWAY COMPANY and shall cause such bonds and other obligations to be cancelled and delivered to the Trustees of the mortgages or liens securing the same for the purpose of obtaining the discharge and satisfaction of such mortgages or liens, and the RAILWAY COMPANY covenants and agrees that in the event of the acquisition by it, through the use of the bonds secured hereby, as in this Indenture provided, of all of the Mortgage bonds, if any, and all of the shares of the outstanding capital stock (except the number of shares necessary to qualify directors) of any other company or companies, and the deposit of said bonds and stock with the TRUST COMPANY, it will as soon as practicable thereafter secure the title to all of the property of any such company or companies and cause all of said property to be subjected to the lien of this Indenture as a first and paramount lien thereon.

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Power of the Railway Company to preserve corporate existence of pledged Companies.

SECTION 5. The TRUST COMPANY upon the request of the RAILWAY COMPANY or, in its discretion without such request, may do whatever may be necessary for the purpose of maintaining or

preserving the corporate existence of any and all companies, all of whose bonds and outstanding stock (less the number of shares necessary to qualify directors) shall, at any time, be pledged hereunder, and for such purposes shall be entitled from time to time to sell, assign, transfer and deliver so many shares of the stock of such companies as may be necessary to qualify persons to act as directors of, or in any other official relation to, said companies; provided, however, that under this provision no transfer shall be made which
367 shall reduce the amount of stock in any such company held by the TRUST COMPANY so as to render it less than a two-thirds interest in said stock, and in every case the TRUST COMPANY may make such arrangements as it shall deem necessary for the protection of the trust hereunder.

Power to join in any reorganization.

SECTION 6. The TRUST COMPANY, with the consent of the RAILWAY COMPANY, at any time may take such steps as in its discretion shall be necessary to protect its interests hereunder in respect of any bonds, obligations or stock subject to the lien hereof, and for that purpose it may join in any plan of reorganization, readjustment or refunding in respect of any such bonds or stocks and may accept new securities issued in exchange therefor under such plan; but in case the RAILWAY COMPANY shall be in default in the performance of any covenant in this Indenture contained, the TRUST COMPANY shall be entitled to take such steps without the consent of the RAILWAY COMPANY.

Power to foreclose mortgages securing pledged bonds.

SECTION 7. In case default shall be made in the payment of the principal or interest of any of the bonds or obligations at any time subject to the lien of this Indenture, then in any such case, the TRUST COMPANY shall, upon the request of the RAILWAY COMPANY, cause proper proceedings to be instituted and prosecuted in some court of competent jurisdiction to foreclose or enforce the mortgage, or lien, by which such bonds or obligations in default are secured. In case the RAILWAY COMPANY shall be in default in the performance of any covenants in this Indenture contained, the TRUST COMPANY shall be entitled to take such steps without the request of the RAILWAY COMPANY.

Property may be purchased by the use of pledged securities.

In case, at any time, any company all of whose outstanding capital stock (less the number of shares necessary to qualify directors) shall be held by the TRUST COMPANY hereunder shall be dissolved or liquidated, or in case all or any of the

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property of any such company shall be sold upon the insolvency of such company at any judicial or other sale, or in case any property covered by a mortgage securing any bonds, or subject to any lien for the payment of any obligations held by the TRUST COMPANY hereunder, shall be sold upon foreclosure of such mortgage, or by enforcement of such lien, then in any such case, if the property of such company, or the property sold, can be acquired by crediting on the bonds, obligations, claims or stock held by the TRUST COMPANY hereunder any sum accruing or to be received thereon out of the proceeds of such property, and paying not more than fifteen per cent. of the price of such property in cash, said TRUST COMPANY in its discretion *may*, but if by the RAILWAY COMPANY requested in writing and provided with the amount of cash necessary therefor, said TRUST COMPANY in every case *shall* purchase, or cause to be purchased, or permit the RAILWAY COMPANY to purchase such property, in the name or on behalf of the TRUSTEES or of the RAILWAY COMPANY or by purchasing trustees, and shall use, or permit the RAILWAY COMPANY to use such bonds, obligations, claims and stock, as far as may be, to make payment for such property; and in case of such purchase said TRUST COMPANY shall take such steps as it may deem proper to cause such property to be vested either in the RAILWAY COMPANY, subject to the lien of this Indenture, or in some other corporation organized or to be organized for that purpose, of whose bonded debt and capital stock, all except the number of shares of stock required to qualify directors, shall be received and held by said TRUST COMPANY for the RAILWAY COMPANY, but subject to the lien of this Indenture.

Property to be subjected to this Indenture, either directly or by collateral pledge.

Expenses of Trustees assumed by the Railway Company.

The RAILWAY COMPANY covenants that, on demand of the TRUSTEES, or the TRUST COMPANY it, the RAILWAY COMPANY, forthwith will pay or satisfactorily provide for all expenditures incurred by the TRUSTEES or by the TRUST COMPANY under any of the provisions of this Section, including all

369 sums required to obtain and perfect the ownership and title to any property which the TRUSTEES or the TRUST COMPANY shall purchase or cause to be purchased pursuant to the provisions of this Section; and in case the RAILWAY COMPANY shall fail so to do, then, without impairment of, or prejudice to, any of its rights hereunder by reason of the default of the RAILWAY COMPANY, the TRUSTEES or the TRUST COMPANY, in their or its discretion, may advance all such expenses and other moneys required, or may procure such advances to be made by others, and for the repayment in six months thereafter, with interest, of such advances made by the TRUSTEES or the TRUST COMPANY, or by others at their or its request, the TRUSTEES or the TRUST COMPANY, as the case may be, shall have a lien prior to the lien of this Indenture, on all the bonds, obligations, shares and other property in respect of which such advances were made, and the proceeds thereof and any property acquired by means of such bonds, obligations or shares.

Proceeds may be paid out for purposes authorized by Article Second hereof.

In case the TRUSTEES or the TRUST COMPANY shall not purchase or cause to be purchased the property sold at any such sale, and shall not join in a plan of reorganization as aforesaid in respect of such bonds or stock, then the TRUST COMPANY shall receive any portion of the proceeds of the sale accruing on the bonds, obligations and stocks by it held hereunder, and such proceeds, from time to time, shall be paid over to the RAILWAY COMPANY for any of the purposes for which bonds may be issued hereunder as provided in Article Second of this Indenture and subject to all the terms and conditions stated in said Article.

Consolidation of Companies whose stocks are pledged.

SECTION 8. Anything in this Indenture contained to the contrary notwithstanding, any company all of whose outstanding capital stock (less the number of shares necessary to qualify directors) shall be subject to this Indenture may be merged or consolidated with, or all or any part of the property of any such company may be sold either to the RAILWAY COMPANY or to any other

370 railway company all of whose outstanding capital stock, except as aforesaid, shall then be held by the TRUST COMPANY hereunder; but no such

Conditions of consolidation or merger.

merger, consolidation or sale shall be made except upon condition *(first)* that in case of any merger or consolidation all of the stock of the consolidated company or the company (other than the RAILWAY COMPANY) into which any such company shall be merged (except as aforesaid) shall be received, or shall continue to be held, by the TRUST COMPANY under this Indenture; and *(second)* that in case of any such merger, consolidation or sale, neither of the companies which shall be parties thereto (other than the RAILWAY COMPANY) nor any consolidated or new company formed thereby, shall, in connection therewith, create or incur any indebtedness or any lien, charge or incumbrance upon its property unless such indebtedness, lien, charge or incumbrance shall be transferred to the TRUST COMPANY and become subject to this Indenture; and *(third)* that in case of a merger or consolidation with, or sale to, the RAILWAY COMPANY, this Indenture shall become a lien upon the railway and all property appertaining to the railway of the company merged or consolidated with, or whose property shall be sold to the RAILWAY COMPANY.

Under the conditions aforesaid, any such merger, consolidation or sale may be made under any laws to which such company may be subject, and, upon request of the RAILWAY COMPANY, the TRUSTEES shall consent to all acts proper to carry into effect the purposes of this section.

Article Fifth.

REMEDIES IN CASE OF DEFAULT.

SECTION 1. In case default shall be made in the payment of any interest on any bond hereby secured, or in the payment of the principal of any such bond, or in case default shall be made in the due observance or performance of any other
371 covenant or condition herein required to be kept or performed by the RAILWAY COMPANY, and any such last-mentioned default shall continue for a period of six months after written notice thereof to the RAILWAY COMPANY from the TRUSTEES or from the holders of twenty per cent. or more in amount of the bonds hereby secured and at the time outstanding, then and in each and every such

Power of Entry after default.

case the TRUSTEES, by their agents or attorneys, may forthwith enter into or upon all or any part of the railroads, rolling stock, property, lands, rights, interests, franchises and premises hereby conveyed, or intended so to be, or conveyed or intended to be conveyed by any indenture supplemental hereto, and each and every part thereof, and may exclude the RAILWAY COMPANY, its agents and servants wholly therefrom, and, having and holding the same, may use, operate, manage and control said railroads and other premises and property, regulate the tolls for the transportation of passengers and freight thereon, and conduct the business thereof, either personally or by their superintendents, managers, receivers, agents, servants or attorneys, to the best advantage of the holders of the bonds hereby secured; and upon every such entry the TRUSTEES may, at the expense of the trust estate, from time to time, either by purchase, repair or construction, maintain and restore, and may insure or keep insured, the rolling stock, tools, machinery and other property, buildings, bridges and structures erected or provided for use in connection with said railroads and other premises, and whereof they shall become possessed as aforesaid, in the same manner and to the same extent as is usual with railroad companies, and likewise may, from time to time, at the expense of the trust estate, make all necessary or proper repairs, renewals, replacements, alterations, additions, betterments and improvements thereto and thereon as to them may seem judicious; and the TRUSTEES in such case shall have the right to manage the mortgaged premises and property and to carry on the business and to exercise all the rights and powers of said RAILWAY COMPANY, either in the name of said RAILWAY
372 COMPANY or otherwise, as the TRUSTEES shall deem best; and the TRUSTEES shall be entitled to collect and receive all tolls, earnings, incomes, rents, issues and profits of the mortgaged premises and property and every part thereof; and after deducting the expenses of operating said railroads and other premises and conducting the business thereof, and of repairs, maintenance, renewals, replacements, alterations, additions, betterments and improvements, and all payments

which may be made for taxes, assessments, insurance and prior or other proper charges upon the said railroads, premises or property or any part thereof, as well as just and reasonable compensation for their own services and for the service of all counsel, agents and employees by them properly engaged and employed, they shall apply the moneys arising as aforesaid as follows:

Application of income by Trustee in possession.

First. In case the principal of the bonds hereby secured shall not have become due, to the payment of the interest in default in the order of the maturity of the installments of such interest, with interest thereon, such payments to be made ratably to the persons entitled thereto without any discrimination or preference.

Second. In case the principal of the bonds hereby secured shall have become due, by declaration or otherwise, first, to the payment of the accrued interest (with interest on the overdue installments thereof) in the order of the maturity of the installments, and next, if any surplus remains towards the payment of the principal of all bonds hereby secured, such payments in every instance to be made ratably to the persons entitled thereto without any discrimination or preference.

Upon the payment in full of whatever may be due for principal or interest and be payable for other purposes, the premises shall be returned to the RAILWAY COMPANY.

Upon the happening of any of the defaults hereinbefore specified the TRUST COMPANY shall have all shares of stock then held by it hereunder transferred to its name as TRUSTEE hereunder, and during the continuance of such default shall be entitled to vote thereon, and, for the benefit of the holders of the bonds hereby secured, shall receive and collect all interest moneys and all dividends maturing and payable upon all bonds and stocks then held by the TRUST COMPANY and apply all moneys so received in the manner in this Section prescribed in respect of the tolls, earnings, income, rents, issues and profits of the mortgaged premises; and as holders of such bonds and shares of stock the TRUST COMPANY shall be entitled to perform any and all acts and to make or execute

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any and all transfers, requests, requisitions or other instruments for the purpose of carrying out the provisions of this Section; but in the event that a receiver of the mortgaged railway or property shall have been appointed and shall be in possession thereof the TRUST COMPANY from time to time in its discretion, *may*, and if requested by the holders of a majority in amount of the bonds hereby secured the TRUST COMPANY *shall*, turn over any part or all of the interest moneys and dividends so collected by it to such receiver and may co-operate with such receiver in managing and operating the railroad and property of the RAILWAY COMPANY, subject to the lien of this Indenture, in such manner as the TRUST COMPANY shall deem for the best interests of the holders of the bonds hereby secured.

In case at any time when the mortgaged premises are in the possession of the TRUSTEES, or of any Receiver, the income and profits received from the mortgaged premises, after deducting all expenses properly chargeable against the same, shall be insufficient to pay all the interest upon bonds secured hereby which was due when the TRUSTEES, or such Receiver, took possession of the mortgaged premises, and all interest which may fall due while the TRUSTEES, or such Receiver, are in possession thereof, the continuance of a default happening before the TRUSTEES or Receiver took possession of
374 the property, or the failure to pay interest maturing while the TRUSTEES, or such Receiver, are in possession of the property, shall entitle the TRUSTEES and the bondholders to the same rights and remedies as are herein or by law provided upon the continuance of such default or the failure to pay such interest, as the case may be, in all respects as if the RAILWAY COMPANY had continued in possession of said premises.

Rights and remedies of Trustees not affected by possession.

SECTION 2. In case default shall be made in the payment of any semi-annual installment of interest on any bond hereby secured when the same shall become payable, and any such installment shall remain unpaid for a period of six months, then the holders of a majority in amount of the bonds hereby secured then outstanding, may, by notice in writing delivered to the RAILWAY COMPANY, declare

Anticipation of maturity of the principal of the bonds.

the principal of all bonds hereby secured then outstanding to be due and payable immediately, and upon any such declaration the same shall become and be immediately due and payable, anything in this Indenture or in said bonds contained to the contrary notwithstanding. This provision, is, however, subject to the condition that, if at any time after the principal of said bonds shall have been so declared due and payable, and before any sale of the mortgaged premises or any part thereof shall have been had, all arrears of interest upon all bonds hereby secured then outstanding, with interest on overdue installments of interest, and all expenses properly incurred by the TRUSTEES or the TRUST COMPANY or by any receiver duly appointed of the mortgaged premises or any part thereof, and their own compensation, shall be paid by the RAILWAY COMPANY to the TRUSTEES, or in case such amounts shall have been collected out of the income of the mortgaged premises, before any sale of the mortgaged premises or any part thereof shall have been had, then and in every such case such declaration and its consequences shall *ipso facto* be rescinded and annulled; but no such rescission and annulment shall extend to or affect any subsequent default, or impair any right consequent thereon.

375 SECTION 3. In case default shall be made in the payment of any interest on any bond hereby secured and any such default shall continue for a period of six months, or in case default shall be made in the payment of the principal of any such bond, when the same shall become due and payable either by its terms or by declaration of the bondholders as aforesaid, or in case default shall be made in the due observance or performance of any other covenant or condition herein required to be kept or performed by the RAILWAY COMPANY, and any such last-mentioned default shall continue for a period of six months after written notice thereof to the RAILWAY COMPANY from the TRUSTEES or from the holders of twenty per cent. or more in amount of the outstanding bonds hereby secured, then and in each and every such case, the TRUSTEES shall be forthwith entitled, with or without entry, personally or by attorney, in their discretion, to sell at pub-

Power of sale.

lic auction to the highest and best bidder all and singular the mortgaged railroads and premises,

rights and franchises, and all stocks, bonds, and other obligations and interests of every description held by the TRUST COMPANY or in any manner subject to this Indenture, and all right, title, interest, claim and demand therein, and right of redemption thereof, which sale shall be made in one lot and as an entirety or in separate parcels in accordance with Section 6 of this Article, and upon such terms as the TRUSTEES may fix, and upon any such sale the TRUSTEES shall execute and deliver a deed or deeds of transfer or release of the property sold or other writing evidencing such sale; *provided*, that this power of sale shall only be exercised so far as may be authorized by law.

SECTION 4. In case default shall be made in the payment of any interest on any bond hereby secured or in the payment of the principal of any such bond, when the same shall become due and payable either by its terms or by declaration of the bondholders as aforesaid, or in case default shall
376 be made in the due observance or performance of any other covenant or condition herein required to be kept or performed by the RAILWAY COMPANY and any such last-mentioned default shall continue for a period of six months after written notice thereof to the RAILWAY COMPANY from the TRUSTEES, or from the holders of twenty per cent. or more in amount of the outstanding bonds hereby secured, then and in each and every such case the TRUSTEES
Power to foreclose. may forthwith proceed to protect and enforce their rights and the rights of the bondholders under this Indenture by a suit or suits in equity or at law, either for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or for the foreclosure of this Indenture for interest, or for principal, or both, or for the enforcement of any other appropriate legal or equitable remedy, as the TRUSTEES shall deem most effectual, in support of any of their rights or duties hereunder.

SECTION 5. Upon filing a bill in equity or upon other commencement of judicial proceedings, as provided in the foregoing section of this Article, by the TRUSTEES to enforce any right under this Indenture, the TRUSTEES shall be entitled

Entitled to appointment of a receiver.

to exercise any and all rights and powers herein conferred, and, as a matter of right, the TRUSTEES shall be entitled to the appointment of a receiver of the premises hereby mortgaged and of the tolls, earnings, revenues, rents, issues, profits and other income thereof, with such powers as the court making such appointment shall confer, and shall be entitled to the application by any such receiver of the net income for the benefit of the holders of the bonds issued hereunder, in accordance with the trusts herein declared. Except as herein expressly provided to the contrary, no remedy in this Indenture conferred upon or reserved to the TRUSTEES is intended to be exclusive of any other remedy, but every remedy in this Indenture provided shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute; and every power and remedy given by this Indenture to the TRUSTEES or to the TRUST COMPANY or to the bondholders may be exercised from time to time and as often as may be deemed expedient. No delay or omission of the TRUSTEES or of the TRUST COMPANY, or of any holder of bonds hereby secured, to exercise any right or power arising from any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein. In case the TRUSTEES shall have proceeded to enforce any right under this Indenture by foreclosure, entry or otherwise, and such proceedings shall have been discontinued and abandoned because of a waiver or for any other reason, or shall have been determined adversely to the TRUSTEES, then and in every such case, the RAILWAY COMPANY and the TRUSTEES shall severally and respectively be restored to their former position and rights hereunder in respect of the mortgaged premises, and all rights, remedies and powers of the TRUSTEES shall continue as though no such proceedings had been taken.

Remedies cumulative.

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Property to be sold as an entirety unless otherwise directed or necessary.

SECTION 6. In the event of any sale under or by virtue of the power of sale herein contained, or by virtue of judicial proceedings, or of any judgment or decree of foreclosure and sale, the whole of the property and premises hereby conveyed, mortgaged, assigned, or pledged, including all stocks,

bonds and other obligations and interests of every description held by the TRUST COMPANY or in any way subject to this Indenture shall be sold in one parcel and as an entirety, unless the TRUSTEES shall elect to sell in several parcels; but if the holders of a majority in amount of the bonds hereby secured then outstanding shall in writing request the TRUSTEES to cause said premises to be sold either in one parcel as an entirety or in several parcels, the sale shall be made in one parcel as an entirety or in several parcels as may be specified in such request, and at such time or times and place or places as
378 may be designated therein so far as the law may allow; but any sale of the mortgaged railroads, franchises and property appurtenant thereto or appertaining to the use thereof shall be made at the City of St. Louis, in the State of Missouri, or such place
Notice of sale. upon the mortgaged railroads as the TRUSTEES may fix. The personal property and chattels appertaining to the railroads herein conveyed and transferred, or intended so to be, now held or hereafter acquired, shall be deemed real estate for all the purposes of this Indenture, and shall be held and taken to be fixtures and appurtenances of the said railroads, and are to be used and sold therewith and in the same manner and not separate therefrom, except as herein otherwise provided.

Notice of any such sale shall state the time and place when and where the same is to be made, and shall contain a brief general description of the property to be sold, and shall be published once in each week for at least four successive weeks prior to such sale in a newspaper published in St. Louis, Missouri, and a newspaper published in New York City, New York. The TRUSTEES may adjourn or cause to be adjourned any such sale from time to time by announcement at the time and place appointed for such sale or for such adjourned sale or sales, and without further notice or publication such sale may be made at the time and place to which the same shall be so adjourned.

Principal of bonds to become due upon sale.

SECTION 7. In case of such sale of the mortgaged railroads and property, whether under the power of sale hereby granted or pursuant to judicial proceedings, the whole of the principal sum of the bonds hereby secured, if not previously due,

shall at once become due and payable, anything in said bonds or in this Indenture to the contrary notwithstanding.

Stay, appraisement or extension laws waived.

SECTION 8. The RAILWAY COMPANY covenants and agrees that it will not at any time insist upon or plead or in any manner whatever claim or take the benefit or advantage of any stay or extension law now or at any time hereafter in force, nor will it claim, take or insist upon any benefit or advantages from any law now or hereafter in force, providing for the valuation or appraisement of the mortgaged premises prior to any sale or sales thereof; nor will it after any such sale or sales claim or exercise any right under any statute to redeem the property so sold or any part thereof; and it hereby expressly waives all benefit and advantage of any such law or laws, and covenants that it will not hinder, delay or impede the execution of any power herein granted and delegated to the TRUSTEES, but that it will suffer and permit the execution of every such power as though no such law or laws had been made or enacted.

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Conveyance to purchaser of mortgaged premises.

SECTION 9. Upon the completion of any sale or sales the TRUSTEES shall execute and deliver to the accepted purchaser or purchasers a deed or deeds of transfer and release of the property and franchises sold, or shall execute and deliver in conjunction with the deed or deeds of the court officer conducting such sale a proper release of such property and franchises, and the TRUST COMPANY shall deliver to such purchaser or purchasers all bonds, obligations and the certificates for all shares of stock held by the TRUST COMPANY and sold to such purchaser or purchasers together with proper assignments and transfers of such bonds, obligations and shares. The TRUSTEES and their successor and successors are hereby appointed the true and lawful attorney or attorneys irrevocable of the RAILWAY COMPANY, in its name and stead, to make all necessary deeds of conveyance, sale and transfer of the property herein conveyed and mortgaged, and for that purpose may execute all necessary acts of conveyance, assignment and transfer, and may substitute one or more persons with like power, the RAILWAY COMPANY hereby ratifying and confirming all that its said attorney or attorneys,

or such substitute or substitutes, shall lawfully do
380 by virtue hereof. Any such sale or sales made under or by virtue of this Indenture, either under the power of sale hereby granted and conferred, or under or by virtue of judicial proceedings, shall divest all right, title, interest, estate, claim and demand whatsoever, either at law or in equity, of the RAILWAY COMPANY, of, in and to the premises sold, and shall be a perpetual bar both at law and in equity against said RAILWAY COMPANY, its successors and assigns, and against any and all persons claiming or to claim the premises sold, or any part thereof, from, through or under the RAILWAY COMPANY, its successors or assigns. Nevertheless, the RAILWAY COMPANY shall, if so requested by the TRUSTEES, ratify and confirm such sale by executing and delivering to the TRUSTEES or to such purchaser or purchasers all proper deeds, conveyances and releases as may be designated in such request.

Receipt of Trustees to discharge purchaser.

The receipt of the TRUSTEES or of the TRUST COMPANY or of the court officer conducting any such sale shall be a sufficient discharge for the purchase money to any purchaser of the property, or any part thereof, sold as aforesaid, and no such purchaser, or his representatives, grantees or assigns, after paying such purchase money and receiving such receipt, shall be bound to see to the application of such purchase money upon or for any trust or purpose of this Indenture, or be answerable in any manner whatsoever for any loss, misapplication, or non-application of any such purchase money or any part thereof.

Application of purchase and other money.

SECTION 10. The purchase money, proceeds or avails of any sale of the mortgaged premises, together with any other sums which may then be held by the TRUSTEES or by the TRUST COMPANY, or be payable to them or it under any of the provisions of this Indenture as part of the trust estate, shall be applied as follows:

Payment of costs, expenses, compensation, &c., of Trustees

First. To the payment of the costs, expenses, fees and other charges of said sale, and a reasonable compensation to the TRUSTEES, their agents and attorneys, and to the payment of all expenses,
381 liabilities and advances incurred, or disbursements

made by the TRUSTEES, or either of them, and to the payment of all taxes, assessments or liens prior to the lien of these presents, except any taxes, assessments or other superior liens subject to which such sale shall have been made.

Payment of amount due on bonds with interest.

Second. To the payment of the whole amount due, owing or unpaid upon the bonds hereby secured for principal and interest, with interest on the overdue installments of interest, and in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid upon the said bonds, then to the payment of such principal and interest without preference or priority of principal over interest or of interest over principal or of any installment of interest over any other installment of interest, ratably, according to the aggregate of such principal and the accrued and unpaid interest.

Surplus to Railway Company.

Third. Any surplus then remaining, to the RAILWAY COMPANY, its successors or assigns, or to whomsoever may be lawfully entitled to receive the same.

Purchasers may use bonds in payment.

SECTION 11. In case of sale of the mortgaged premises or any part thereof, the purchaser, in settlement or payment for the property purchased, shall be entitled to use and apply towards payment of the purchase price of the property purchased any bonds and any matured and unpaid coupons hereby secured, by presenting such bonds and coupons so that there may be credited and endorsed or stamped as paid thereon the sums applicable to such payment out of the net proceeds of such sale as provided in Section 10 of this Article; and such purchaser shall thereupon be credited on account of the purchase price payable by him with the sums so applicable and credited on the bonds and coupons so presented. Such bonds and coupons so presented by the purchaser shall be deemed to be paid only to the extent of the amounts so credited as paid thereon; Provided, however, that no coupons, the payment of which shall have been extended, shall be accepted on account of payment of purchase money for said property.

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At any such sale the TRUSTEES or the TRUST COMPANY, or any bondholders or their agents, may bid for and purchase such property and may make

payment therefor as aforesaid, and, upon compliance with the terms of sale, may hold, retain and dispose of such property without further accountability.

Respective rights of 25% and a majority of the bondholders, in case of default.

SECTION 12. Upon the written request of the holders of twenty-five per cent. in amount of the bonds hereby secured then outstanding, in case of any default as aforesaid, it shall be the duty of the TRUSTEES, upon being indemnified as hereinafter provided, to take all needful steps for the protection and enforcement of their rights and the rights of the holders of the bonds hereby secured, or to exercise the powers of entry and sale herein conferred, or to commence appropriate judicial proceedings by action, suit or otherwise, as the TRUSTEES shall deem most expedient in the interest of the holders of the bonds hereby secured; but, anything in this Indenture contained to the contrary notwithstanding, the holders of a majority in amount of the bonds hereby secured and outstanding, shall have the right from time to time, if they so elect and manifest such election by an instrument in writing executed and delivered to the TRUSTEES, to direct and control the method and place of conducting any and all proceedings for any sale of the premises hereby conveyed and mortgaged, or for the foreclosure of this Indenture, or for the appointment of a receiver, or any other action or proceeding hereunder. However, nothing herein contained shall be construed as requiring any direction or action on the part of bondholders to enable the TRUSTEES to act in their discretion in any case where such action by bondholders in not herein expressly required.

Trustees may recover judgment for the benefit of the bondholders.

SECTION 13. In case default shall be made in the payment of any interest on any bond hereby secured, or in case default shall be made in the payment of the principal of any such bond when the same shall become payable, whether at the maturity of said bond, or by declaration as authorized by this Indenture, or by a sale of the mortgaged premises as hereinbefore provided, then, upon demand of the TRUSTEES, the RAILWAY COMPANY agrees and covenants that it will pay to the TRUS-

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TEES, for the benefit of the holders of the bonds and coupons hereby secured then outstanding, the whole amount which shall then be due and payable on all such bonds and coupons for principal or interest, or both, as the case may be, with interest upon the overdue principal and installments of interest; and, in case the RAILWAY COMPANY shall fail to pay the same forthwith upon such demand, the TRUSTEES, in their own names and as trustees of an express trust, shall be entitled to recover judgment for the whole amount so due and unpaid. The TRUSTEES shall be entitled to recover judgment as aforesaid before or after or during the pendency of any proceeding for the enforcement of the lien of this Indenture upon the mortgaged premises, and the right of the TRUSTEES to recover such judgment shall not be affected by any entry or sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the provisions of this Indenture, or by the foreclosure of the lien thereof; and in case of a sale of the mortgaged premises and of the application of the proceeds of sale to the payment of the mortgage debt, the TRUSTEES, in their own names and as trustees of an express trust, shall be entitled to receive and to enforce payment of any and all deficiency or amounts then remaining due and unpaid upon any and all of the bonds issued hereunder and then outstanding for the benefit of the holders thereof, and shall be entitled to recover judgment for any portion of the mortgage debt remaining unpaid, with interest. No recovery of any judgment by the TRUSTEES and no levy of any execution under any such judgment upon property subject to the lien of this Indenture, or upon any other property, shall in any manner, or to any extent, affect or impair the lien of the TRUSTEES upon the mortgaged property or any part
384 thereof, or any rights, powers, or remedies of the TRUSTEES hereunder, or any rights, powers, or remedies of the holders of the bonds hereby secured, but such lien, rights, powers and remedies shall continue unaffected and unimpaired as before. Any moneys thus recovered or collected by the TRUSTEES under this Article, less the cost and expenses of collection and the reasonable compensation of the TRUSTEES, shall be applied by the TRUSTEES towards payment to the holders

of such bonds and coupons of the amounts due and unpaid upon such bonds and coupons respectively, such payment in every instance to be made ratably and without any preference or priority upon presentation of the respective bonds and coupons and endorsement of such payment thereon, if partly paid, or upon cancellation thereof, if paid in full.

The Railway Company may voluntarily surrender to the Trustees the mortgaged premises.

SECTION 14. The RAILWAY COMPANY, at any time before full payment of the bonds secured hereby and whenever it shall deem it expedient for the better protection and security of such bonds, although there be then no default entitling the TRUSTEES to enter into possession, may, with the consent of the TRUSTEES, surrender and deliver to the TRUSTEES full possession of the whole or any part of the property, premises and interests hereby conveyed, or intended so to be, for any period fixed or indefinite. Upon such surrender and delivery to the TRUSTEES, with their consent, the TRUSTEES shall enter into and upon the premises so surrendered and delivered, and shall take and receive possession thereof, for such period fixed or indefinite, as aforesaid, without prejudice, however, to their right at any time subsequently, when entitled thereto by any provision hereof, to insist upon and to maintain such possession, though beyond the expiration of any prescribed period. Upon any such voluntary surrender and delivery of said property and premises, or any part thereof, the TRUSTEES, from the time of their entry,
385 shall work, maintain, use, manage, control and employ the same in accordance with the provisions of this Indenture, and shall receive and apply the income and revenues thereof as provided in Section 1 of this Article.

Article Sixth.

POWER TO RELEASE.

The Trustees may upon request of the Railway Company release certain property subject to the lien of this Indenture.

Upon the written request of the RAILWAY COMPANY, evidenced by resolution of its Board of Directors or Executive Committee, the TRUSTEES shall, from time to time release from the lien and operation of this Indenture any part of the real estate and other property hereby conveyed and mortgaged (but nothing in this Article contained shall be construed as authorizing any re-

lease of any bonds, or other obligations or shares of stock pledged hereunder); *provided*, that no part of the lines of track or of the rights of way shall be released unless the same shall no longer be of use in the operation of the mortgaged railroads, and that no part of such lines of track or rights of way shall be so released if thereby the continuity of the railroads hereby mortgaged shall be broken; and *provided further*, that no part of the mortgaged premises or property shall be released hereunder unless at the time of such release it shall no longer be necessary or expedient to retain the same for the operation, maintenance or use of the remaining railroads and property or for use in conducting the business thereof, and no such release shall be made unless the RAILWAY COMPANY shall have contracted to sell the property so to be released, or shall have contracted to exchange the same for other property.

Proceeds of sale of mortgaged property may be used for any purpose authorized by Article Second hereof.

The proceeds of any and all such sales and all moneys received as compensation for any property subject to this Indenture taken by exercise of the power of eminent domain or otherwise shall be paid to the TRUST COMPANY to be by it paid over to the RAILWAY COMPANY for any of the purposes for which bonds may be issued hereunder as provided in Article Second of this Indenture. Any new property acquired by the RAILWAY COMPANY by exchange or purchase, to take the place of any property released hereunder shall forthwith become subject to the lien of this Indenture as fully as if specifically mortgaged hereby and without further conveyance; but, if requested by the TRUSTEES, the RAILWAY COMPANY shall convey the same to the TRUSTEES by appropriate deeds or other instruments upon the trusts and for the purposes of this Indenture.

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Changes in leases and trackage rights.

The RAILWAY COMPANY, from time to time, may make changes or alterations in or substitutions of any and all leases, trackage rights or contracts; but in such event any modified, altered or substituted leases, trackage rights or contracts shall forthwith become bound by and be subject to the terms of this Indenture to the same extent and in the same manner as those previously existing.

The RAILWAY COMPANY, while in possession of the mortgaged premises, shall also have full power, from time to time, in its discretion, to dispose of any of the rails, equipment, machinery, tools, implements, materials and supplies at any time held subject to the lien hereof, which may have become unsuitable or unnecessary for such use, replacing the same by new rails, equipment, machinery, tools, implements, materials or supplies, which shall thereby immediately become subject to the lien of this Indenture.

In case the mortgaged premises shall be in the possession of a receiver lawfully appointed, the powers in and by this ARTICLE conferred upon the RAILWAY COMPANY may be exercised by such receiver; and if the TRUSTEES shall be in possession of the mortgaged premises under any provision of this Indenture, then all the powers by this ARTICLE conferred upon the RAILWAY COMPANY may be exercised by the TRUSTEES in their discretion.

A certificate signed by the President or a Vice-President of the RAILWAY COMPANY shall be received by the TRUSTEES as conclusive evidence of any of the facts mentioned in this Article, and shall be full warrant and protection to the TRUSTEES for their action on the faith thereof.

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Article Seventh.

PROTECTION OF TRUSTEES.

Trustees not obliged to act unless indemnified against expenses.

The TRUSTEES shall not be under any obligation to take any action towards the execution or enforcement of the trusts hereby created which, in their opinion will be likely to involve them in expense or liability, unless one or more of the holders of the bonds hereby secured shall, as often as required by the TRUSTEES, furnish them reasonable security and indemnity against such expense or liability; nor shall the TRUSTEES be required to take notice of any default hereunder unless notified in writing of such default by the holders of at least twenty per cent. in amount of the bonds hereby secured then outstanding, or to take any action in respect of any default unless requested to take action in

respect thereof by a writing signed by the holders of not less than twenty-five per cent. in amount of the bonds hereby secured then outstanding, nor unless tendered reasonable security and indemnity aforesaid, anything herein contained to the contrary notwithstanding; but the foregoing provisions of this Section are intended only for the protection of the TRUSTEES and shall not be construed to limit or affect any discretion or power by any provision of this Indenture given to the TRUSTEES to determine whether or not they shall take action in respect of such default, or any power or discretion of the TRUSTEES to take action in respect of any default without such notice or request from bondholders.

May require additional evidence.

In any case where it shall be provided in this Indenture that the TRUSTEES or the TRUST COMPANY may accept a certificate from the RAILWAY COMPANY or any of its officers, or the resolution of the Board of Directors or Executive Committee of the RAILWAY COMPANY as sufficient evidence of any fact upon which the TRUSTEES or the TRUST COMPANY shall be required or permitted to take or refrain from taking action, the TRUSTEES or the TRUST COMPANY shall not be bound absolutely by such certificate or resolution, but may, in their or its discretion and at their or its option, make any independent investigation into the truth or accuracy of any such fact; and in case they or it shall after such independent investigation be satisfied that the said certificate or resolution or any fact contained therein is inaccurate, the TRUSTEES or the TRUST COMPANY may, in their discretion, take or refuse to take or refrain from taking action predicated upon such fact. Nothing in this section contained shall, however, take from the TRUSTEES the absolute protection herein conferred upon them in case they shall accept, without further investigation, the conclusiveness of any such certificate or resolution.

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Compensation of Trustees.

The TRUSTEES respectively shall be entitled to reasonable compensation for all services rendered by them in the execution of the trusts hereby created, which compensation, as well as all their reasonable expenses necessarily incurred and actually disbursed hereunder, the RAILWAY COMPANY

To be paid by the railway Company.

agrees to pay, and the TRUST COMPANY shall have a lien, prior to the lien of this Indenture upon the property hereby mortgaged, for the payment of its compensation and reasonable expenses incurred hereunder. The TRUSTEES shall not be answerable for the default or misconduct of any agent, attorney or employee appointed by them in pursuance hereof, if such agent, attorney, or employee shall have been selected with reasonable care, nor shall either TRUSTEE be liable for the acts or defaults of the other, nor for anything whatever in connection with this trust, except each for its or his wilful misconduct or gross negligence. The TRUSTEES shall not be responsible for the filing or recording of this Indenture, but the RAILWAY COMPANY covenants that it will with all convenient speed cause the same to be recorded. The TRUSTEES shall not be personally liable for any debts contracted by them, or for damages to persons or property carried or injured, or for salaries or nonfulfillment of contracts during any period wherein the TRUSTEES shall manage the trust property or premises upon entry as aforesaid.

Trustee not liable for faults of Agents.

Covenant by Railway Company to record

Trustees not personally liable for debts, damages, etc.

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Article Eighth.

RIGHT OF ACTION BY BONDHOLDERS.

No holder of any bond or coupon hereby secured shall have any right to institute any suit, action or proceeding at law or in equity upon or in respect of this Indenture, or for the execution of any trust or power thereof, or for the appointment of a receiver, or for any other remedy under or upon this Indenture, unless such holder shall previously have given to the TRUSTEES written notice of any existing default and of the continuance thereof as hereinbefore provided; nor unless also the holders of twenty-five per cent. in amount of the bonds hereby secured then outstanding shall have made written request upon the TRUSTEES and shall have afforded to them reasonable opportunity themselves to proceed to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in their own name; nor unless, also, such holder or holders shall have offered to the TRUSTEES reasonable security and in-

demnity against the costs, expenses and liabilities to be incurred therein or thereby; and such notification, request, and offer of indemnity are hereby declared, in every such case, at the option of the TRUSTEES, to be conditions precedent to any action or cause of action for foreclosure or for the appointment of a receiver, and to the institution of any such suit, action or proceeding and to any other remedy hereunder; it being understood and intended that no one or more holders of bonds or coupons shall have any right in any manner whatever to affect, disturb or prejudice the lien of this Indenture by his or their action, or to enforce any right hereunder, except in the manner herein provided, and that all proceedings hereunder at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all holders of such outstanding bonds and coupons.

Article Ninth.

RESIGNATION OR REMOVAL OF TRUSTEES.

The TRUSTEES, or either of them, or any trustee hereafter appointed, may resign and be discharged from the trusts created by this Indenture, by delivering to the RAILWAY COMPANY written notice thereof addressed to the bondholders and the RAILWAY COMPANY and by publishing such notice at least twice a week for four successive weeks in one newspaper published in St. Louis, Missouri, and one newspaper published in New York City, New York, and by due execution of the instruments herein required. The TRUSTEES or either of them may be removed at any time by an instrument in writing under the hands of the holders of a majority in amount of the bonds hereby secured and then outstanding; but no such removal shall be made before default hereunder without the written consent of the RAILWAY COMPANY.

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Must publish written notice of resignation.

Provisions for removal of Trustees.

Any trustee hereunder other than The Mercantile Trust Company, or the TRUST COMPANY for the time being its successor hereunder, may be removed at any time by an instrument in writing executed by the RAILWAY COMPANY and by said The Mercantile Trust Company, or its successor; and in case of the removal, resignation, death or

incapacity of any such trustee the RAILWAY COMPANY and said The Mercantile Trust Company, or such successor TRUST COMPANY, at any time by an instrument in writing, executed by them jointly, may appoint a successor to any such other trustee.

Appointment of new Trustee.

In case at any time The Mercantile Trust Company shall resign or be removed or otherwise become incapable of acting, a successor TRUST COMPANY, qualified as hereinafter stated, may be appointed by the holders of a majority in amount of the bonds hereby secured then outstanding by an instrument or concurrent instruments or counterparts, signed by such bondholders or their agents duly authorized; *provided*, nevertheless, and it is hereby agreed and declared that, in case at any time neither the present TRUST COMPANY nor any successor TRUST COMPANY shall be in office hereunder, the RAILWAY COMPANY may, by an instrument executed by order of its Board of Directors, appoint a Trust Company (which shall be qualified as hereafter stated) to fill such vacancy until a new Trust Company shall be appointed by the bondholders. The RAILWAY COMPANY thereupon shall publish notice of such appointment at least once a week for four successive weeks in a newspaper published in St. Louis, Missouri, and a newspaper published in New York City, New York; and any new Trust Company so appointed shall immediately and without further act be superseded by a Trust Company appointed, in the manner above provided, by the holders of a majority in amount of the bonds hereby secured, if so appointed within one year after the first publication of such last-mentioned notice.

Railway Company may make appointment *pro tem.*

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Every TRUSTEE appointed hereunder, as successor to The Mercantile Trust Company, shall always be a trust company in good standing doing business in the City of New York, or elsewhere, if there be such a trust company willing, able and qualified to accept the trust upon reasonable or customary terms, and all the rights, powers and duties by this Indenture vested in the TRUST COMPANY shall be vested in such successor TRUST COMPANY, and every provision of this Indenture applicable to The Mercantile Trust Company shall apply equally to such successor Trust Company.

Qualifications of Trust Company.

Instrument to be executed by incoming and retiring Trustee.

Any new trustee appointed hereunder shall execute, acknowledge and deliver to his or its co-trustee and also to the RAILWAY COMPANY an instrument in writing accepting such appointment hereunder, and thereupon such new trustee, without any further act, deed or conveyance, shall become vested with all the estates, properties, rights, powers and trusts of his or its predecessor in the trust hereunder with like effect as if originally named as trustee herein; but the trustee ceasing to act shall, nevertheless, on the written demand of the new trustee, execute and deliver an instrument conveying and transferring to such new trustee upon the trusts herein expressed, all the estates, properties, rights, powers and trusts of the trustee so resigning or removed, and shall duly assign, transfer and deliver all property and moneys held by such trustee to the new trustee so appointed in its place; and, upon request of any
392 such new TRUSTEE, the RAILWAY COMPANY shall make, execute, acknowledge and deliver any and all deeds, conveyances, or instruments in writing necessary for more fully and certainly vesting in and confirming to such new trustee all such estates, properties, rights, powers, trusts and duties.

Article Tenth.

RIGHT OF RAILWAY COMPANY TO POSSESSION.

Right of possession until default.

Until some default shall have been made in the due and punctual payment of the interest or of the principal of the bonds hereby secured, or of some part of such interest or principal, or in the due and punctual performance and observance of some covenant or condition hereof obligatory upon the RAILWAY COMPANY, and such default shall have continued beyond the period of grace, if any, herein provided in respect thereof, the RAILWAY COMPANY, its successors and assigns shall be suffered and permitted to retain actual possession of the railroads, premises and property hereby mortgaged, and to manage, operate and use the same and every part thereof, with the rights and franchises appertaining thereto, and to collect, receive and take the tolls, earnings, rents, issues, profits and other income thereof; but the RAILWAY COMPANY hereby covenants and agrees to first pay from such income, after paying the operating ex-

Covenant to pay interest of bonds from income.

penses of said railroads and the taxes thereon, the interest accruing and maturing upon the bonds issued hereunder; and such income, after paying the operating expenses of said railroads, shall, either before or after default, and whether said railroads are operated by the RAILWAY COMPANY, or by the TRUSTEES under the power of entry hereinbefore reserved, or by a receiver or receivers appointed by any court at the instance of the RAILWAY COMPANY or of any creditor, stockholder or other person interested in said Company or having the right to apply for such appointment, be primarily pledged and applied to the payment of the interest and principal of said bonds in the order of priority declared in Section 1 of ARTICLE FIFTH hereof.

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Article Eleventh.

DISCHARGE OF MORTGAGE.

Payment of principal and interest of bonds, as herein provided to discharge this Indenture.

If, when the bonds hereby secured shall have become due and payable, the RAILWAY COMPANY shall well and truly pay or cause to be paid the whole amount of the principal moneys and interest due upon all of the bonds hereby secured and outstanding, or shall provide for such payment by depositing with the TRUST COMPANY hereunder, for the payment of such bonds, the entire amount due and to become due thereon for principal and interest, or shall, at any time, deliver or cause to be delivered to the TRUST COMPANY for cancellation and destruction all of the bonds issued hereunder, together with all unmatured coupons thereunto belonging; and shall also pay or cause to be paid all other sums payable hereunder, and shall well and truly keep, perform and observe all the things herein required to be kept, performed and observed by it according to the true intent and meaning of this Indenture, then and in that case all property, rights and interests hereby conveyed shall revert to the RAILWAY COMPANY, or to whomsoever may be entitled thereto, and the estate, right, title and interest of the Trustees therein shall thereupon cease, determine and become void; and the TRUSTEES shall, in such case, on demand of the RAILWAY COMPANY, and at its cost and expense, enter satisfaction and discharge of this Indenture upon the public records.

Article Twelfth.

Authenticity of Instruments Executed by Bondholders.

Any request or other instrument required by this Indenture to be signed or executed by bondholders may be in any number of documents of similar tenor, and may be signed or executed by such bondholders in person, or by agent or attorney appointed in writing. Proof of the execution of such a request or other instrument, or of a writing appointing any such agent or attorney, and of the holding by any person of coupon bonds transferable by delivery, shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Trustees or either of them with re-
394 gard to any action taken by them under such request or other instrument, if made in the following manner, viz.: (1) The fact and date of the execution by any person of any such request, or other instrument, or writing may be proved by the certificate of any notary public or other officer authorized to take acknowledgments of deeds to be recorded in any State within the United States, certifying that the person signing such request or other instrument acknowledged to him the execution thereof, or by the affidavit of a witness to such execution duly sworn to before any such notary public or other officer. (2) The amount of coupon bonds transferable by delivery held by any person executing any such request or other instrument as a bondholder, and the amounts and issue numbers of the bonds held by such person and the date of his holding the same, may be proved by a certificate executed by any trust company, bank or other depositary (wherever situated) whose certificate shall be deemed by the Trust Company to be satisfactory, showing that such person had on deposit with such depositary or exhibited to it the bonds described in such certificate at the date therein mentioned. (3) The ownership of registered bonds shall be proved by the books for the registry of such bonds provided for under Section 6 of Article Third hereof.

Article Thirteenth.

Status of Bondholders.

Ownership of coupon bonds.

The Railway Company and the Trustees may deem and treat the bearer of any coupon bond

hereby secured, which shall not at the time be registered as hereinbefore authorized, and the bearer of any coupon for interest on any such bond, whether such bond shall be registered or not, as the absolute owner of such bond or coupon, as the case may be, for the purpose of receiving payment thereof and for all other purposes; and neither the RAILWAY COMPANY nor the TRUSTEES shall be affected by any notice to the contrary.

Ownership of registered bonds.

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The RAILWAY COMPANY and the TRUSTEES may deem and treat the person in whose name any registered bond without coupons, issued hereunder, shall be registered upon the books of the RAILWAY COMPANY as hereinbefore provided, as the absolute owner of such bond for the purpose of receiving payment of, or on account of, the principal and interest of such bond, and for all other purposes, and may deem and treat the person in whose name any coupon bond shall be so registered as the absolute owner thereof for the purpose of receiving payment of, or on account of the principal thereof, and for all other purposes except to receive payments of interest represented by outstanding coupons; and all such payments so made to such registered holder, for the time being, or upon his order, shall be valid and effectual to satisfy and discharge the liability upon such bond to the extent of the sum or sums so paid.

Article Fourteenth.

NON-LIABILITY OF STOCKHOLDERS, OFFICERS AND DIRECTORS.

Bondholders have no recourse against stockholders, officers or Directors.

No recourse under any obligation, covenant or agreement of this Indenture, or of any bond or coupon hereby secured, shall be had against any incorporator, stockholder, officer or director of the RAILWAY COMPANY, or of any successor corporation, either directly or through the RAILWAY COMPANY, by the enforcement of any assessment or by any legal or equitable proceeding, or by virtue of any statute or otherwise, it being expressly agreed and understood that this mortgage and the obligations hereby secured are solely corporate obligations, and that no personal liability whatever shall attach to, or be incurred by, the stockholders, officers or directors of the RAILWAY COMPANY, or of

any successor corporation, or any of them, under or by reason of any of the obligations, covenants or agreements contained in this Indenture, or in any of the bonds or coupons hereby secured, or implied therefrom, and that any and all personal liability, either at common law or in equity, or by statute, of every such stockholder, officer or director, is hereby expressly waived as a condition of, and consideration for, the execution and issue of this mortgage and such bonds and coupons.

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Article Fifteenth.

Trustees' Acceptance of Trusts.

Acceptance.

The parties hereto of the second part, hereby accept the trusts in this Indenture declared and provided, and agree to perform the same upon the terms and conditions hereinbefore set forth. Except when otherwise indicated, the words "the Trustees," or "said Trustees," or any other equivalent term, as used in this Indenture, shall be held and construed to mean the Trustees for the time being, and the words "bond," "bondholder" and "holder" shall include the plural as well as the singular number.

Definition of terms herein employed.

Except when otherwise indicated the term "Trust Company," as used in this Indenture, shall be held to mean The Mercantile Trust Company, or any trust company which, for the time being, shall be a trustee hereunder in succession to said The Mercantile Trust Company.

Successors and assigns of the Railway Company bound.

All the covenants, agreements, stipulations and provisions in this Indenture contained, by or relating to the Railway Company, shall bind and relate to its successors and assigns, whether so expressed or not; and every successor corporation which shall be lawfully vested with the ownership of the properties subject to this Indenture shall possess and may exercise each and every right and power hereunder of the Railway Company.

Execution in counterpart.

In order to facilitate the recording of this Indenture, the same may be simultaneously executed in twenty-five counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same instrument.

In Witness Whereof, the party hereto of the first part and the said THE MERCANTILE TRUST COMPANY, one of the parties hereto of the second part, have duly caused these presents to be signed in their corporate names, respectively, by their respective Presidents or Vice-Presidents and their respective corporate seals to be hereto affixed, attested by their Secretaries or Assistant Secretaries, and said William K. Bixby, one of the parties hereto of the second part, has hereunto set his hand and seal as of the day and year first above written.

397

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY,
By GEORGE J. GOULD,
President.

Seal of Railway Co.

Attest:
A. H. CALEF, Secretary.

THE MERCANTILE TRUST COMPANY,
By ALVIN W. KRECH,
Vice-President.

Seal of Trust Co.

Attest:
J. D. OSTRANDER, Asst. Secretary.

WILLIAM K. BIXBY.

Signed, sealed and delivered on behalf of the St. Louis, Iron Mountain and Southern Railway Company in the presence of

ALEX G. COCHRAN.
LAWRENCE GREER.
CHAS. EDGAR MILLS,
Commissioner for Louisiana in New York.

Signed and sealed on behalf of The Mercantile Trust Company in the presence of

I. MICHAELS.
E. B. CLARK.
CHAS. EDGAR MILLS,
Commissioner for Louisiana in New York.

Signed and sealed by William K. Bixby, in the presence of

ALEX G. COCHRAN.
LAWRENCE GREER.
CHAS. EDGAR MILLS,
Commissioner for Louisiana in New York.

Seal of
Chas. Edgar Mills.

STATE OF NEW YORK,
398 County of New York—ss:

I, CHAS. EDGAR MILLS, residing in the County and State of New York aforesaid, a Commissioner of Deeds in the State of New York for the States of Illinois, Missouri, Arkansas and Louisiana, respectively, duly appointed and qualified and commissioned by the Governors of said States, respectively, and a Notary Public in and for the City and County of New York, duly appointed, qualified and commissioned, do hereby certify that on the first day of May, 1903, before me personally appeared George J. Gould, the President, and A. H. Calef, the Secretary of St. Louis, Iron Mountain and Southern Railway Company, party of the first part and grantor in the foregoing instrument or mortgage deed, with whom I am personally acquainted and who are personally known to me, and known to me to be such President and Secretary respectively, and personally known to me to be the same persons whose names are signed to the foregoing instrument or mortgage deed as such President and Secretary respectively, and they, for themselves and on behalf of said St. Louis, Iron Mountain and Southern Railway Company, on this day severally acknowledged to me that said St. Louis, Iron Mountain and Southern Railway Company had executed the foregoing instrument or mortgage deed, and that they had executed the same as their own free and voluntary act and deed, and as the free and voluntary act and deed of the said company for the consideration and purposes therein mentioned and set forth.

And the said George J. Gould and A. H. Calef being by me severally duly sworn, did severally depose and say that he, said George J. Gould, is, and at the time of the execution of the foregoing instrument was, the President, and that he, said A. H. Calef is, and at the time of the execution of the foregoing instrument was, the Secretary, of St. Louis, Iron Mountain and Southern Railway Company, the corporation grantor in the foregoing instrument; that such instrument was signed in behalf of said corporation by authority of a resolution of its Board of Directors; that he, George J.

Gould, and he, A. H. Calef, knows the corporate seal of the said company; that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and
399 that it was so affixed by order of the Board of Directors of the said company, and that the said George J. Gould signed the name of said corporation and his own name thereto as President, and the said A. H. Calef signed his name thereto as Secretary, by the order of said Board of Directors; and that the said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said George J. Gould and the said A. H. Calef acknowledged said instrument to be the free act and deed of said corporation.

In witness whereof, I have hereunto set my hand and seals of office as Commissioner of Deeds in the State of New York for the several States of Illinois, Missouri, Arkansas and Louisiana, and also as Notary Public in and for the County of New York, in the State of New York, at my office in said City of New York this first day of May, 1903.

CHARLES EDGAR MILLS,
[Seal] Commissioner for the State of Illinois.
CHARLES EDGAR MILLS,
[Seal] Commissioner for the State of Missouri.
CHARLES EDGAR MILLS,
[Seal] Commissioner for the State of Arkansas.
CHARLES EDGAR MILLS,
[Seal] Commissioner for the State of Louisiana.
CHARLES EDGAR MILLS,
[Seal] Notary Public,
New York State and County.

Commission will expire March 30th, 1905.

400 STATE OF NEW YORK,
County of New York—ss.:

I, CHARLES EDGAR MILLS, residing in the County and State of New York aforesaid, a Commissioner of Deeds in the State of New York for the States of Illinois, Missouri, Arkansas and Louisiana respectively, duly appointed, qualified and commissioned by the Governors of said States respectively, and a Notary Public in and for the County of New York, duly appointed and qualified and commissioned, do hereby

certify that on the first day of May, 1903, before me personally appeared Alvin W. Krech, the Vice-President, and J. D. Ostrander, the Assistant Secretary, of The Mercantile Trust Company, one of the Parties of the second part and one of the grantees in the foregoing instrument or mortgage deed, with whom I am personally acquainted, and who are personally known to me and known to me to be such Vice-President and Assistant Secretary respectively, and personally known to me to be the same persons whose names are signed to the foregoing instrument or mortgage deed as such Vice-President and Assistant Secretary respectively, and they, for themselves and on behalf of said The Mercantile Trust Company, on this day severally acknowledged to me that said The Mercantile Trust Company had executed the foregoing instrument or mortgage deed, and that they had executed the same as their own free and voluntary act and deed, and as the free and voluntary act and deed of the said company, for the consideration and purposes therein mentioned and set forth.

And the said Alvin W. Krech and J. D. Ostrander, being by me severally duly sworn, did severally depose and say that he, said Alvin W. Krech is, and at the time of the execution of the foregoing instrument was the Vice-President, and that he, said J. D. Ostrander is, and at the time of the execution of the foregoing instrument was the Assistant Secretary of The Mercantile Trust Company, the corporation grantee in the foregoing instrument; that such instrument was signed in behalf of said corporation by authority of a resolution of its Board of Directors; that he, Alvin W. Krech, and he, J. D. Ostrander, knows the corporate seal of the said company; that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that it was so affixed by order of the Board of Directors of the said corporation, and that the said Alvin W. Krech signed the name of said corporation and his own name thereto as Vice-President, and the said J. D. Ostrander signed his name thereto as Assistant Secretary, by like order of said Board of Directors; and that the said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said Alvin W. Krech and the said J. D. Ostrander acknowledged said instrument to be the free act and deed of said corporation.

401

In witness whereof, I have hereunto set my hand and seals of office as Commissioner of Deeds in the State of New York for the several States of Illinois, Missouri,

Arkansas and Louisiana, and also as Notary Public in and for the County of New York, in the State of New York, at my office in said City of New York, this first day of May, 1903.

CHARLES EDGAR MILLS,
[Seal] Commissioner for the State of Illinois.
CHARLES EDGAR MILLS,
[Seal] Commissioner for the State of Missouri.
CHARLES EDGAR MILLS,
[Seal] Commissioner for the State of Arkansas.
CHARLES EDGAR MILLS,
[Seal] Commissioner for the State of Louisiana.
CHARLES EDGAR MILLS,
[Seal] Notary Public,
New York State and County.

Commission will expire March 30th, 1905.

402 STATE OF NEW YORK,
County of New York—ss.:

I, CHARLES EDGAR MILLS, residing in the City and State aforesaid, a Commissioner of Deeds in the State of New York for the States of Illinois, Missouri, Arkansas and Louisiana, duly appointed, qualified and commissioned by the Governors of said States respectively, and a Notary Public in and for the County of New York, duly appointed and qualified commissioned, do hereby certify that on the first day of May, 1903, before me personally appeared William K. Bixby, one of the parties of the second part, and one of the grantees in the foregoing instrument or mortgage deed, with whom I am personally acquainted, and who is personally known to me, and personally known to me to be the same person whose name is signed to the foregoing instrument or mortgage deed as trustee, and he on this day acknowledged to me that he had executed the foregoing instrument or mortgage deed as trustee, and that he had executed the same as his own free and voluntary act and deed as trustee for the consideration and purposes therein mentioned and set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and seals of office as Commissioner of Deeds in the State of New York for the States of Illinois, Missouri, Arkansas and Louisiana, and also as Notary Public in and for the County of New York, in the State of New York,

at my office in said City of New York, this first day of May, 1903.

CHARLES EDGAR MILLS,

[Seal] Commissioner for the State of Illinois.

CHARLES EDGAR MILLS,

[Seal] Commissioner for the State of Arkansas.

CHARLES EDGAR MILLS.

[Seal] Commissioner for the State of Louisiana.

CHARLES EDGAR MILLS,

[Seal] Commissioner for the State of Missouri.

CHARLES EDGAR MILLS,

[Seal] Notary Public,
New York State and County.

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UNITED STATES OF AMERICA

St. Louis Iron Mountain and Southern Railway Company

No. 32898

FIRST MORTGAGE

UNITED STATES OF AMERICA

St. Louis, Iron Mountain and Southern Railway Company

No. 32898

FIRST MORTGAGE
FOUR PER CENT THIRTY-YEAR
GOLD BOND

The St. Louis Iron Mountain and Southern Railway Company
The undersigned the Railway Company for value received promises to pay on the first day of May one
thousand nine hundred and thirty three at its office or agency in the City of New York to the bearer of this bond or
registered thereto the registered holder hereof One Thousand Dollars gold coin of the United States of the present
standard of weight and fineness and to pay interest thereon from May 1st 1903 until the payment of this bond
at the rate of four per cent per annum such interest being payable at said office or agency in like gold coin semi-
annually on the first days of May and November in each year but only upon surrender for cancellation of the
respective coupons for such interest hereto annexed. Both the principal and interest of this bond are payable without
deduction for any tax or taxes which the Railway Company may be required to pay thereon or to retain therefrom
under any present or future law of the United States or of any State County or Municipality therein.
This bond is one of a series of coupon and registered bonds of the Railway Company known as St. Louis Iron
Mountain and Southern Railway Company River and Gulf Divisions First Mortgage Four Per Cent Thirty-
Year Gold Bonds duly authorized and approved by the Board of Directors and by the stockholders of the Railway
Company to the amount limited by law and by the Mortgage hereinafter mentioned to be issued and secured by a
mortgage to secure the payment of the principal sum of Twenty Million Dollars at any one
time outstanding all of which bonds are issued and to be issued under and in pursuance of and are equally
secured by a mortgage or deed of trust dated May 1st 1903 executed by the Railway Company to the Mercantile
Trust Company a corporation of the State of New York and William K. Bixby of St. Louis and residents of the City of
St. Louis State of Missouri as trustees of all the property and franchises described in said mortgage or deed of
trust to which reference is hereby made for a description of the property and franchises mortgaged or pledged the
nature and extent of the security the rights of the holders of said bonds as to the same and the terms and conditions
under which said bonds are issued and secured and agreed to be issued. If default shall be made in the payment of any
semi-annual installment of interest on this bond or if the same shall become due and be demanded and such
installment shall remain unpaid for six months after such demand the principal of this bond may become due
and payable in the manner provided in said mortgage or deed of trust. This bond shall pass by delivery unless
registered in the name of the owner on the books of the Railway Company at its office or agency in the City of New
York such registration being noted on the bond by the Railway Company. After such registration no transfer
shall be valid unless made on said books by the registered holder in person or by attorney duly authorized and
similarly noted on the bond but the same may be discharged from registration by being transferred to bearer and
thereupon transferability by delivery shall be restored but this bond may again from time to time be registered or
transferred to bearer as before. Such registration however shall not affect the negotiability of the coupons which

RIVER AND GULF DIVISIONS

RAILWAY COMPANY

FIRST MORTGAGE
FOUR PER CENT THIRTY-YEAR
GOLD BOND

St Louis Iron Mountain and Southern Railway Company

The undersigned, formed the Railway Company, for value received, promises to pay on the first day of May one thousand nine hundred and thirty three at its office or agency in the City of New York, to the bearer of this bond or, if registered, then to the registered holder hereof, One Thousand Dollars gold coin of the United States of the present standard of weight and fineness, and to pay interest thereon from May 1st 1883, until the payment of this bond, at the rate of four per cent per annum, such interest being payable at said office or agency in like gold coin, semi-annually on the first days of May and November, in each year, but only upon surrender for cancellation of the respective coupons for such interest hereto annexed. Both the principal and interest of this bond are payable without deduction for any taxes or charges or duties now or hereafter imposed by the Government of the United States or by any State or Municipality within the Railway Company may be required to retain therefrom under any present or future laws of the United States or of any State, County or Municipality within the same. This bond is one of a series of coupon and registered bonds of the Railway Company known as St Louis Iron Mountain and Southern Railway Company, Missouri, River and Gulf Divisions, First Mortgage, Four Per Cent, Thirty Years, Gold Bonds, duly authorized and approved by the Board of Directors and by the Stockholders of the Railway Company, to the amount limited and secured by a mortgage or deed of trust, dated May 1st 1883, executed by the Railway Company to the Mercantile Trust Company, a corporation of the State of New York, and William K. Bixby, of St Louis and residents of the City of St Louis, Trustees, as security for the payment of the principal and interest of all the bonds issued and to be issued under and in pursuance of said mortgage or deed of trust, equally and ratably without preference or priority of any one bond over any other by reason of priority in the issue or negotiation thereof or otherwise, and conveying to the said Trustees all of the railroads, franchises and property of the Railway Company, now owned or hereafter acquired, described in said mortgage or deed of trust, to which reference is hereby made for a description of the property and franchises mortgaged or pledged, the nature and extent of the security, the rights of the holders of said bonds under the same and the terms and conditions upon which said bonds are issued and secured and agreed to be paid. Default shall be made in the payment of any coupon hereby secured when the same shall become due and payable, and such default shall continue for six months after such demand, the principal of this bond may become due and payable in the manner provided in said mortgage or deed of trust. This bond shall pass by delivery unless registered in the name of the owner on the books of the Railway Company at its office or agency in the City of New York, such registration being noted on the bond by the Railway Company. After such registration no transfer shall be valid unless made on said books by the registered holder in person or by attorney duly authorized and similarly noted on the bond, but the same may be discharged from registration by being transferred to bearer, and the coupons transferability by delivery shall be restored, but this bond may again from time to time be registered or transferred to bearer as before. Such registration however shall not affect the negotiability of the coupons which shall continue to be transferable by delivery. The holder of this bond may at his option surrender the same for cancellation with all unmatured coupons thereto attached or appertaining in exchange for a registered bond without coupons as provided in said mortgage or deed of trust. No recourse in any event shall be had for the payment of the principal or interest of this bond against any stockholder, director or officer of the Railway Company. This bond shall not be valid unless authenticated by the certificate endorsed hereon executed by the Mercantile Trust Company or its successor as one of the Trustees under said mortgage or deed of trust.

In Witness Whereof, St Louis Iron Mountain and Southern Railway Company has caused these presents to be signed by its President or one of its Vice Presidents and its corporate seal affixed by the Secretary or one of its Assistant Secretaries to be hereto affixed as of the first day of May A.D. 1883 and the annexed interest coupons to be executed with the engraved signatures of its Treasurer.

St Louis Iron Mountain and Southern Railway Company.

by

J B Kennard

President

Attest

Secretary

413 (Clerk's Certificate to Transcript.)

United States of America,
Eastern Division of the Eastern
Judicial District of Missouri.—ss:

I, Jas. J. O'Connor, Clerk of the District Court of the United States within and for the Eastern Division of the Eastern Judicial District of Missouri Do Hereby Certify the above and foregoing to be a full, true and complete transcript (except insofar as the same is restricted by the praecipes for transcript heretofore set out) of the record and proceedings in cause No. 6935, In the Matter of Missouri Pacific Railroad Company, Debtor, upon the appeal of Bankers Trust Company and William H. Bixby, Trustees of the St. Louis, Iron Mountain & Southern Railway Company River & Gulf Division First Mortgage, from the Decree entered July 6, 1934, as fully as the same remains on file and of record in my office.

Seal
U. S. Dist. Court
East. Div. of the
East. Jud. Dist. of
Missouri

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of said Court at office in the City of St. Louis, in said Division of said District, this 26th day of September, in the year of our Lord, Nineteen Hundred and Thirty-four.

JAS. J. O'CONNOR,
Clerk of said Court.
By J. R. O'Connor,
Deputy.

Filed Sep. 26, 1934. E. E. Koch, Clerk.

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414 (Notice of Appeal to be presented to U. S. Circuit Court of Appeals and Acknowledgment of Service.)

In the United States Circuit Court of Appeals for the Eighth Circuit.

In the Matter of

Missouri Pacific Railroad Company, Debtor.

In Proceedings for the Reorganization of a Railroad.

To:

Reconstruction Finance Corporation, a corporation, or Stanley Reed, C. M. Clay and Max O. Truitt, Its Attorneys of Record.

United States of America, or Angus D. MacLean and Harry C. Blanton, Its Attorneys of Record.

Guaranty Trust Company of New York and Benjamin F. Edwards, Trustees under the First and Refunding Mortgage of the Missouri Pacific Railroad Company, or Davis, Polk, Wardwell, Gardiner & Reed and Nagel, Kirby, Orrick & Shepley, Their Attorneys.

L. W. Baldwin and Guy A. Thompson, Trustees in Reorganization of the Missouri Pacific Railroad Company, or Edward J. White, Their Attorneys.

Sirs:—

Please Take Notice that the undersigned Bankers Trust Company, a corporation, and William H. Bixby, as trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage Due May 1, 1933, hereby appeal from the order and decree of the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri entered on the 6th day of July, 1934, and entitled "On petitions of Trustees of debtor and others, to construe the Gold Clause in bonds pleaded by Bankers Trust Company, Special Intervener, under St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions, First Mortgage" to the Circuit Court of Appeals for the Eighth Circuit, and you are hereby further notified that the undersigned will on the 30th day of July, 1934,
415 or as soon thereafter as counsel may be heard, present to the Circuit Court of Appeals for the Eighth Circuit of the United States of America, sitting at St. Paul, Minnesota, their petition for leave to appeal from the decree aforesaid.

Dated at St. Louis, Missouri, July 26, 1934.

BANKERS TRUST COMPANY and
WILLIAM H. BIXBY, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Division First Mortgage Due May 1, 1933,

By Alexander & Green,
Fordyce, White, Mayne & Williams,
Attorneys for Bankers Trust Company and William H. Bixby as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions, First Mortgage Due May 1, 1933.

July 27, 1934.

The undersigned acknowledge receipt of a copy of the attached Notice of Appeal and hereby consent to the presentation of the aforementioned petition for appeal to the Circuit Court of Appeals for the Eighth Circuit, on July 30, 1934, or as soon thereafter as counsel may be heard.

RECONSTRUCTION FINANCE
CORPORATION, a corporation,
By Stanley Reed, Gen. Counsel,
C. M. Clay, & Max O'Rell Truitt Counsel
Attorneys for the Reconstruction
Finance Corporation.

UNITED STATES OF AMERICA,
By Angus D. MacLean and
Harry C. Blanton,
Attorneys for United States of
America.

416 GUARANTY TRUST COMPANY OF
NEW YORK and BENJAMIN F.
EDWARDS, Trustees under the First
and Refunding Mortgage of the Missouri
Pacific Railroad Company.
By Davis, Polk, Wardwell, Gardiner & Reed,
Nagel, Kirby, Orrick & Shepley,
Attorneys for Guaranty Trust
Company of New York and Benjamin F. Edwards, Trustees under
the First and Refunding Mortgage
of the Missouri Pacific Railroad
Company.

L. W. BALDWIN and
GUY A. THOMPSON, Trustees in Reorganization of the Missouri Pacific Railroad Company,
By Edw. J. White,
Attorney for L. W. Baldwin and
Guy A. Thompson, Trustees in Reorganization of the Missouri Pacific Railroad Co.

(Endorsed): Notice of Appeal. Filed in U. S. Circuit Court of Appeals on July 30, 1934, E. E. Koch, Clerk.

418 (Petition for Appeal to be Presented to U. S. Circuit Court of Appeals.)

In the United States Circuit Court of Appeals for the Eighth Circuit

In the Matter of

Missouri Pacific Railroad Company, Debtor.

In Proceedings for the Reorganization of a Railroad.

To the Honorable Judges of the Circuit Court of Appeals for the Eighth Circuit:

Your petitioners, Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage Due May 1, 1933, deeming themselves aggrieved by the decree of the United States District Court for the Eastern Judicial District of Missouri, Eastern Division, made and entered in the above-entitled cause by the Honorable Charles B. Faris, one of the Judges thereof, on the 6th day of July, 1934, entitled "On Petitions of Trustees of Debtor and Others, to Construe the Gold Clause in Bonds Pleaded by Bankers Trust Company, Special Intervener, Under St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions First Mortgage", respectfully petition your Honors for leave to appeal from said decree.

In support of this petition your petitioners respectfully represent that on the 31st day of March, 1933, the above Debtor filed its petition under Section 77 of the Bankruptcy Act, and on said day the Court approved said petition as duly filed. Your petitioners are Trustees of the St.
419 Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage Due May 1, 1933, which is a valid and subsisting first lien on property now owned by the Debtor, and under which Mortgage bonds of a nominal amount of $34,548,000, payable in gold coin of the United States of the standard of weight and fineness prevailing on May 1, 1903, are now outstanding. On December 27, 1933, your petitioners filed their petition, dated December 4, 1933, for leave to intervene in said proceeding, and for other relief. Said petition contained the following allegation:

"VII. That bonds validly issued under and secured by the Mortgage in the sum of thirty-four million five hundred forty-eight thousand dollars ($34,548,000) are now outstand-

ing. Each of said bonds and the Mortgage provides that principal and interest is payable in gold coin of the United States of the standard of weight and fineness prevailing on May 1, 1903."

It also contained the following prayers for relief:

"4. That the lien of the Mortgage be determined to be in the sum of Thirty-four million five hundred and forty-eight thousand dollars ($34,548,000), with interest thereon from May 1, 1933, at the rate of six per cent per annum, less such amounts as shall have been accepted by holders of the Bonds on account of interest since May 1, 1933; that such sum and interest be determined to be payable in gold coin of the United States of the standard and weight and fineness prevailing on May 1, 1903, or, in the alternative, that any determination with respect to the right of the Trustees to payment in such gold coin be reserved without prejudice to any rights which the Trustees may have to payment in such gold coin on a final determination herein; that the determination of the amount of the lien of the mortgage be incorporated in a formal judgment or decree of this Court substantially equivalent to a judgment in an action to foreclose the Mortgage; and that the amount specified in such judgment or decree be determined to bear interest at the rate of six per cent per annum;

"5. That the Court determine that any and all sums paid over to your petitioners as Trustees on account of the rents, issues, profits, tolls and other income of the property subject to the lien of the Mortgage may be applied, after deduction by your petitioners as Trustees of their expenses
420 and of just and reasonable compensation for your petitioners and for the service of all counsel, agents, and employees properly engaged and employed by them, first on account of interest accruing from time to time on the amount to be specified in the judgment or decree hereinabove prayed for, any balance remaining to be applied on account of so much of said judgment as may represent interest on the Mortgage or the Bonds, and any further balance remaining to be applied on account of so much of said judgment as may represent the principal of the Mortgage or the Bonds; and that the Court determine that any such sums of money so paid to your petitioners as Trustees otherwise than in gold coin on account of any obligation payable in gold coin may be accepted by such Trustees at the market

value of such sums of money in such gold coin at the times of such payments;"

Thereafter, and on or about April 5, 1934, an order was entered permitting a special intervention by your petitioners.

On April 10, 1934, an answer was interposed by the Trustees of the Debtor which contained the following allegation:

"VII.

"With respect to the prayer of said intervening petition that the sum secured by said mortgage with interest thereon be determined to be payable in gold coin of the United States of the standard of weight and fineness prevailing on May 1, 1903, as provided in said mortgage and in the bonds secured thereby, Trustees aver that said provisions of said mortgage and said bonds are void and of no effect for the reason that the Congress of the United States, under Joint Resolution of the House and Senate of the United States, adopted June 5, 1933, provided that promises to pay dollars in gold coin could be satisfied by the payment of dollars in any other form, and said Joint Resolution set aside and rendered nugatory said provisions of said Mortgage and bonds, and, to enforce said provisions against the Debtor or Trustees in this proceeding would result in increasing the amount due upon the principal of said bonds over the legal amount which the holders of said bonds are entitled to recover.

"Trustees further aver that, in order to prevent delay, in the presentation to, and promulgation by, the Interstate Commerce Commission of a plan for the reorganization of the capital structure of the Debtor in this proceeding, the Court should speedily pass upon said issue and, further, Trustees state that, by reason of the provisions of the Federal Equity Rule No. 29, said issue of law raised by the interveners in this case, going to the whole or a material part of the cause of action stated in the intervening petition, may be called up and disposed of before final hearing at the discretion of the Court, and said issue should be speedily decided by the Court so that the reorganization of the Debtor's corporate structure shall not be unnecessarily delayed."

421

Said answer also contained the following prayer for relief:

"Wherefore, Trustees pray that said issue shall be passed upon without delay by the Court and that the Court

shall order and decree that, under and by virtue of said Joint Resolution of the Congress of the United States of June 5, 1933, the so-called Gold Clause of said Mortgage, set up in said intervening petition by said Trustees, shall be adjudged null and void."

On April 9, 1934, an answer to said petition was filed by the Reconstruction Finance Corporation, an intervener, containing the following allegations:

"8. It alleges that the 73rd Congress, among other measures dealing with the emergency then and now existing, adopted Public Resolution No. 10 (a joint resolution to secure uniform value to the coins and currencies of the United States) as follows:

'Whereas the holding of or dealing in gold affect the public interest, and are therefore subject to proper regulation and restriction; and

'Whereas the existing emergency has disclosed that provisions of obligations which purport to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby, obstruct the power of the Congress to regulate the value of the money of the United States, and are inconsistent with the declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in the payment of debts, Now, therefore, be it

'Resolved by the Senate and House of Representatives of the United States of America in Congress Assembled, That (a) every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States
422 measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. Any such provision contained in any law authorizing obligations to be issued by or under authority of the United States, is hereby repealed, but the repeal of any such provision shall not invalidate any other provision or authority contained in such law.

'(b) As used in this resolution, the term "obligation" means an obligation (including every obligation of and to the United States, excepting currency) payable in money of the United States; and the term "coin or currency" means coin or currency of the United States, including Federal Reserve notes and circulating notes of Federal Reserve Banks and national banking associations.

'Sec. 2. The last sentence of paragraph (1) of subsection (b) of section 43 of the Act entitled "An Act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes", approved May 12, 1933, is amended to read as follows:

" 'All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations) heretofore or hereafter coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues, except that gold coins, when below the standard weight and limit of tolerance provided by law for the single piece, shall be legal tender only at valuation in proportion to their actual weight. ' "

that said resolution, which was approved June 5, 1933, is in full force and effect, and it not only prohibits payment of the sums secured by the aforesaid mortgage in gold coin or in other than lawful money of the United States but expressly declares to be against public policy the clause or provision relied upon by the Trustees of the aforesaid mortgage as authorizing and requiring payment 'in gold coin of the United States of the standard of weight and fineness prevailing on May 1, 1903'.

423 "9. It alleges that the 73d Congress, among other measures dealing with the emergency then and now existing, enacted Public Act No. 1, which was approved March 9, 1933, and, except as may be amended by the Act of Congress referred to in paragraph '10' hereof, is in full force and effect; that said Act authorized the President of the United States to regulate and prohibit, among other things, transactions in foreign exchange, transfers of credit between or payments by banking institutions as defined by the President, and the export, hoarding, melting or earmarking of gold or silver coin or bullion or currency, and

confirmed such actions theretofore taken by the President; and authorized the Secretary of the Treasury to require any or all persons to deliver to the Treasurer of the United States any or all gold coin, gold bullion and gold certificates owned by such persons; that consonant with and pursuant to said Act orders were issued by the President on March 6, March 10, April 5, April 20, August 28, August 29, October 25, 1933, and January 12, 1934, and by the Secretary of the Treasury on December 28, 1933, January 11 and January 15, 1934, regulating and prohibiting the ownership, export, hoarding, melting or earmarking of gold coin or bullion or currency; that such orders prevent, and were intended to prevent, the payment of the sums secured by the aforesaid mortgage 'in gold coin of the United States of the standard of weight and fineness prevailing on May 1, 1903'.

"10. It alleges that the 73rd Congress enacted the Gold Reserve Act of 1934, which was approved January 30, 1934, and is in full force and effect; that said Act prohibits the coinage of gold and the payment or delivery of gold coin by the United States, and requires that all gold coin of the United States be withdrawn from circulation; that said Act requires the Secretary of the Treasury, with the approval of the President, to prescribe the conditions under which gold may be acquired and held, transported, melted or treated, imported, exported, or earmarked; that pursuant to said Act, the Secretary of the Treasury, with the approval of the President, on January 30 and 31, 1934, issued provisional regulations prescribing the conditions under which such acquisition and disposition of gold might be effected; that said Act and said regulations prohibit payment of the sums secured by the aforesaid mortgage 'in gold coin of the United States of the standard of weight and fineness prevailing on May 1, 1903'.

"11. In order to effect an orderly preparation and consummation of a plan of reorganization for the debtor under Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, which is the primary purpose of said Section 77, under which these proceedings are now
424 pending, it is necessary that the court determine without delay whether or not the debt alleged to be owing on account of the principal of the bonds and the interest now or hereafter due, secured by the aforesaid mortgage and on account of the expenses of the Trustees and of the compensation of the aforesaid petitioner and for the services of all counsel, agents and employees properly en-

gaged and employed by them, may be satisfied by the payment of the face amount of said debt in lawful money of the United States, since until this determination is made, the nature and extent of the claims and interests of the various creditors cannot be definitely ascertained."

Said answer also contained the following prayer for relief:

"2. That the Court determine without delay that the debt alleged to be owing on account of the principal of the bonds and the interest now or hereafter due, secured by the aforesaid mortgage and on account of the expenses of the Trustees and of the compensation of the aforesaid petitioner and for the services of all counsel, agents and employees properly engaged and employed by them, may be satisfied by the payment of the face amount of said debt in lawful money of the United States."

On April 28, 1934, an answer was filed by the United States of America, a special intervener, containing allegations and a prayer for relief substantially the same as those to be found in the answer of the Reconstruction Finance Corporation.

On May 16, 1934, an answer was filed on behalf of Guaranty Trust Company and Benjamin F. Edwards, as Trustees of the First and Refunding Mortgage of the Missouri Pacific Railroad Company, containing the following prayer for relief:

"(5) With respect to prayer No. 4 of the petition, the First and Refunding Mortgage Trustees allege that it is neither necessary nor important to the progress of these proceedings that there be a decision at this time upon the rights of the petitioners or the bondholders whom they represent to have such obligations as may be found owing to them paid in gold coin of the standard described in the petition, and the First and Refunding Mortgage Trustees join in the alternative of petitioners' prayer and request that any determination with respect to the right of the petitioners to payment in such gold coin be reserved without prejudice to the rights of any party; the First and Refunding
425 Mortgage Trustees further deny that petitioners are entitled to a formal judgment or decree of this Court substantially equivalent to an action to foreclose the Mortgage, or that the amount specified in such judgment or decree be determined to bear interest at the rate of six per cent. per annum, the First and Refunding Mortgage Trustees alleging that the petitioners, if entitled to any judgment for a specific sum, are not entitled to interest on any amount

specified in such judgment at a greater rate than four per cent. per annum."

Upon the joint motion of the Trustees of the Missouri Pacific Railroad Company, Reconstruction Finance Corporation, and United States of America, based on the respective prayers for relief to be found in their several answers, and after the taking of evidence and the consideration of arguments and briefs, the District Court made its findings and decree, a certified copy of which is hereto annexed marked Exhibit A.

As appears from said decree, and from the assignment of errors, the decree of the Court below presents important questions as to the construction of the so-called gold clauses in the Mortgage and Bonds, as to the construction and effect of Public Resolution No. 10, 73d Congress, approved June 5, 1933, and other Acts of Congress, and as to the constitutionality of said Public Resolution No. 10 and other Acts of Congress bearing directly or indirectly on the right of your petitioners to payment in gold coin of the standard of weight and fineness prevailing on May 1, 1903, or the equivalent thereof.

Your petitioners refer to the assignment of errors filed by them simultaneously with this petition, setting forth the errors made by the Court below and giving the grounds for this appeal, and make said assignment of errors a part hereof.

426 Wherefore, your petitioners pray that they may be allowed in the discretion of this Honorable Court to appeal in matter of law herein, that the prayer of said petition be granted and a citation be issued directed to the Debtor; to L. W. Baldwin and Guy A. Thompson, as Trustees of the Debtor; to Reconstruction Finance Corporation, intervener; to United States of America, intervener; and to Guaranty Trust Company and Benjamin F. Edwards, as Trustees under the First and Refunding Mortgage of the Missouri Pacific Railroad Company, interveners; commanding them to appear before the United States Circuit Court of Appeals for the Eighth Circuit, to do and receive what may appertain to justice to be done in the premises, and that a transcript of the record and proceedings in said proceeding, duly authenticated, may be transmitted to the United States Circuit Court of Appeals for the Eighth Circuit.

And your petitioners pray that the Court fix the amount of the bond which your petitioners shall give on said appeal.

BANKERS TRUST COMPANY and
WILLIAM H. BIXBY,
As Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage Due May 1, 1933,
By Alexander & Green,
Attorneys for Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage Due May 1, 1933, and

JAMES H. McINTOSH,
EDWARD W. BOURNE,
THOMAS W. WHITE,
Attorneys for Trustees.

July 25, 1934.

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427 Exhibit A.

In the District Court of the United States Within and for the Eastern Division, Eastern Judicial District of Missouri.

In the Matter of Missouri Pacific Railroad Company, Debtor.

In Proceedings for the Reorganization of a Railroad No. 6935.

Decree on Petitions of Trustees of Debtor and Others, to Construe the Gold Clause in Bonds Pleaded by Bankers Trust Company, Special Intervener, Under St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions First Mortgage.

The above cause having come on to be heard, on the twenty-fifth day of May, A. D. 1934, upon the petition of Bankers Trust Company of New York and W. K. Bixby, Trustees of the St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions First Mortgage, interveners, and upon the answer of the Trustees of the
427a Debtor, Missouri Pacific Railroad Company, and the answers of the Reconstruction Finance Corporation and United States of America, interveners, praying for af-

firmative relief therein, involving and concerning the validity of the so-called "gold clauses," hereinafter described, contained in the St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions First Mortgage, dated May 1, 1903, and the bonds issued thereunder, and praying for a decree that the amount due under the St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions First Mortgage, dated May 1, 1903, and the bonds issued thereunder, is the principal amount named in the bonds validly issued and outstanding thereunder, with interest thereon, all payable in such money of the United States as is legal tender for the payment of debts, notwithstanding the so-called "gold clauses" contained in said mortgage and bonds,

and

upon the issues presented by the said petition and the said answers, praying for affirmative relief therein, involving and concerning the validity of the so-called "gold clauses" hereinafter described contained in said mortgage and said bonds,

and

counsel for Bankers Trust Company and W. K. Bixby, as Trustees of said St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions First Mortgage, dated May 1, 1903, having contended that Joint Resolution No. 10 of Congress, of June 5, 1933, is in contravention of the Constitution of the United States and beyond the
428 powers of Congress as applied to the so-called "gold clauses" of said mortgage and said bonds, and having contended that Congress has no power to violate or impair the obligation of said mortgage and bonds for payment in gold coin of the United States of the standard of weight and fineness existing on May 1, 1903, or its equivalent, and the Court having considered the evidence and the arguments and briefs of counsel, and being fully advised in the premises, doth make the following Findings:

(1). That it is provided in the said Mortgage and in each of the said Mortgage Bonds by the so-called "gold clauses," hereinbefore mentioned, that the principal of and the interest on the indebtedness represented thereby is payable in gold coin of the United States of the standard of weight and fineness existing on May 1, 1903.

(2) That the interveners, Bankers Trust Company and W. K. Bixby, as Trustees under the said mortgage, claim that there have been heretofore validly issued and are now outstanding under and secured by said mortgage bonds pro-

viding for the payment of $34,548,000, principal amount, in gold coin of the United States of the standard of weight and fineness existing on May 1, 1903, and interest thereon payable in like gold coin.

(3). That the said gold clauses contained in the said Mortgage and Bonds, as hereinbefore set out, are void and cannot legally be enforced by valid judgment at law, and if enforceable in equity, then only to the extent that interveners, as Trustees, are entitled to recover on each $1,000 (principal amount) bond in controversy the sum of $1,000 and
428a the interest due thereon, in such money of the United States as is legal tender for the payment of debts.

(4). That payment of the amount of the principal and interest due upon said bonds, in such money of the United States as is legal tender for the payment of debts, will discharge, dollar for dollar, the face amount of such indebtedness on account of the principal and interest due on said bonds.

(5). That Public Resolution No. 10, 73d Congress, approved June 5, 1933, is constitutional and valid, and by virtue thereof payment of the principal of and interest on said Mortgage Bonds in any gold coin of the United States, or in an amount of money equivalent to the value of gold coin, is against public policy.

(6). That payment in gold, or in gold coin, is and has been since May 1, 1933, the date of the maturity of said Mortgage Bonds, impossible in fact and in law.

(7). That payment in lawful money of the United States in an amount equivalent to the value of gold coin would seriously interfere with the reorganization of the Debtor Railroad.

(8). That the pendency, undisposed of, of the question thus presented interposes a serious obstacle to the continued orderly administration of the affairs of the Debtor Railroad and impedes, delays, hinders and obstructs the reorganization of said Railroad.

Wherefore, It Is by the Court, this 6th day of July, A. D. 1934,

Ordered, Adjudged and Decreed that the said Trustees
429 and the said bondholders are entitled to payment of $1,000 upon each said bond in the principal amount of $1,000, validly issued and outstanding, in such lawful money of the United States as is legal tender for the payment of

debts, with interest thereon, also in such lawful money of the United States; and that such payment shall extinguish the total amount of both principal and interest due upon the said bonds.

Further Ordered, Adjudged and Decreed that any and all amounts payable to the said Mortgage Trustees shall be paid to said Trustees in any lawful money of the United States which is legal tender for debts; and that the money so paid shall be accepted by said Trustees at the nominal value thereof and in discharge, dollar for dollar, of the face amount of the indebtedness, including interest, to which it may be applied.

And It Is Further Ordered, Adjudged and Decreed that the claims of the said Trustees and the said bondholders for payment in gold or its equivalent and for payment in excess of that herein decreed is denied and rejected.

C. B. FARIS,
United States District Judge.

Filed Jul 6, 1934. Jas. J. O'Connor, Clerk.

430 UNITED STATES OF AMERICA,
EASTERN DISTRICT OF MISSOURI.—ss:

I, JAS. J. O'CONNOR, Clerk of the United States District Court in and for the Eastern District of Missouri, do hereby certify that the annexed and foregoing is a true and full copy of the original order on petitions of Trustees of Debtor and Others, to construe the Gold Clause in Bonds Pleaded by Bankers Trust Company, Special Intervener, Under St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions First Mortgage, filed July 6, 1934, in cause No. 6935 Bkptcy, In the Matter of Missouri Pacific Railroad Company, Debtor.

now remaining among the records of the said Court in my office.

Seal
U. S. Dist. Court
East. Div. of the
East. Jud. Dist. of
Missouri.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at St. Louis, Mo., this 24th day of July, A. D. 1934.

JAS. J. O'CONNOR,
Clerk.
By J. R. O'Connor,
Deputy Clerk.

(Endorsed): Petition for allowance of Appeal. Filed in U. S. Circuit Court of Appeals on July 30, 1934, E. E. Koch, Clerk.

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433 (Assignment of Errors on Appeal allowed by U. S. Circuit Court of Appeals.)

In the United States Circuit Court of Appeals for the Eighth Circuit.

In the Matter of

Missouri Pacific Railroad Company, Debtor.

In Proceedings for the Reorganization of a Railroad.

Come now Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage Due May 1, 1933, having made their petition for the allowance of an appeal herein from the order entered in the United States District Court for the Eastern Judicial District of Missouri, Eastern Division, on July 6, 1934, entitled "On Petitions of Trustees of Debtor and Others, to Construe the Gold Clause in Bonds Pleaded by Bankers Trust Company, Special Intervener, Under St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions First Mortgage", and file the following assignment of errors, upon which they will rely upon the prosecution of their appeal:

1. The Court erred in making its Finding No. (3).

2. The Court erred in making its Finding No. (4).

3. The Court erred in making its Finding No. (5).

4. The Court erred in making its Finding No. (6).

5. The Court erred in making its Finding No. (7).

6. The Court erred in making its Finding No. (8).

434 7. The Court erred in failing to hold that the so-called "gold clauses" in the Mortgage and Bonds referred to in said decree were intended to and do entitle the obligees to gold coin of the United States of the standard of weight and fineness on May 1, 1903, or to the equivalent thereof if such equivalent could be determined.

8. The Court erred in failing to hold that the equivalent of $1,000 in gold coin of the United States of the standard of weight and fineness of May 1, 1903, could be determined, and was at the time of said decree and still is the number of

dollars then and now current obtained by multiplying 1,000 by 25.8 and dividing the same by 15-5/21.

9. The Court erred in failing to hold that the lien of the Mortgage and the amount due on the Bonds issued thereunder could not be discharged except by the payment of the amount of such lien or otherwise pursuant to law.

10. The Court erred in holding that Congress had the power under the Constitution of the United States to enact so much of Public Resolution No. 10, approved June 5, 1933, as purports to provide that every obligation requiring payment in gold or in an amount in money of the United States measured by gold could be discharged upon payment, dollar for dollar, in any coin or currency which at the time of the payment is legal tender for public and private debts.

11. The Court erred in failing to hold that so much of Public Resolution No. 10, approved June 5, 1933, as
435 purports to provide that every obligation requiring payment in gold or in an amount in money of the United States measured by gold could be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts is in contravention of the Constitution of the United States and particularly the Fifth Amendment thereto.

12. The Court erred in holding that the Trustees and the Bondholders are entitled only to payment of $1,000 upon each Bond in the principal amount of $1,000, validly issued and outstanding, in such lawful money of the United States as is legal tender for the payment of debts, with interest thereon, also in such lawful money of the United States; and that such payment would extinguish the total amount of both principal and interest due upon said Bonds.

13. The Court erred in holding that any and all amounts payable to the said Mortgage Trustees should be paid to said Trustees in any lawful money of the United States which is legal tender for debts, and that the money so paid should be accepted by said Trustees at the nominal value thereof and in discharge, dollar for dollar, of the face amount of the indebtedness, including interest, to which it may be applied.

14. The Court erred in holding that the claims of the said Trustees and the said Bondholders for payment in
436 gold or its equivalent and for payment in excess of that provided for in said decree should be denied and rejected.

Wherefore, appellants pray that the said decree entered in the said District Court July 6, 1934, be reversed, and that such other and further relief may be given these appellants as may be just and proper.

BANKERS TRUST COMPANY and
WILLIAM H. BIXBY, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage Due May 1, 1933.
By Alexander & Green,
Attorneys for Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage Due May 1, 1933.

July 25, 1934.

(Endorsed): Assignment of Errors. Filed in U. S. Circuit Court of Appeals on July 30, 1934, E. E. Koch, Clerk.

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438 (Order of U. S. Circuit Court of Appeals Allowing Appeal.)

In the United States Circuit Court of Appeals for the Eighth Circuit

In the Matter of

Missouri Pacific Railroad Company, Debtor.

In Proceedings for the Reorganization of a Railroad.

The petition of Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage Due May 1, 1933, for leave of this Court to take an appeal from the decree entered in the United States District Court for the Eastern Judicial District of Missouri, Eastern Division, entitled "On Petitions of Trustees of Debtor and Others, to Construe the Gold Clause in Bonds Pleaded by Bankers Trust Company, Special Intervener, Under St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions First Mortgage", is hereby granted; and an appeal is hereby allowed to this Court from said decree upon the said Bankers Trust Company and William H. Bixby, as Trustees aforesaid, giving bond as required by law in the sum of $250.

It Is Further Ordered that the Clerk of the United States District Court for the Eastern Judicial District of Missouri, Eastern Division, prepare and certify a transcript of the record and proceedings herein, in accordance with the statutes and the rules of said District Court, and transmit the same to the United States Circuit Court of Appeals for the Eighth Circuit.

July 30, 1934.

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440 (Bond on Appeal Allowed by U. S. Circuit Court of Appeals.)

American Surety Company
of New York.

Organized in 1884.

Company's Home Office Building
100 Broadway, New York.

In the United States Circuit Court of Appeals for the Eighth Circuit.

In the Matter of

Missouri Pacific Railroad Company, Debtor.

Know All Men By These Presents, That We, Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions First Mortgage Bonds due May 1st, 1933, as Principals, and the American Surety Company of New York, a corporation organized and existing under the laws of the State of New York, of No. 100 William Street, Borough of Manhattan, City of New York, as Surety, are held and firmly bound unto Missouri Pacific Railroad Company, Debtor, L. W. Baldwin and Guy A. Thompson, as Trustees of the Debtor, Reconstruction Finance Corporation, Intervener, United States of America, Intervener, Guaranty Trust Company of New York and Benjamin F. Edwards, as Trustees under the First and Refunding Mortgage of the Missouri Pacific Railroad Company, Interveners, (Obligees) in the full and just sum of Two Hundred Fifty and 00/100 Dollars ($250.00) to be paid to the said Obligees by said Principals, their successors or assigns, to which payment well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, firmly by these presents. Sealed with our seals and dated the 25th day of July, 1934.

Whereas, a Decree was entered in the above entitled cause on the 6th day of July, 1934, entitled "On Petition of Trustees of Debtor and Others, to construe the Gold Clause in Bonds Pleaded by Bankers Trust Company, Special Intervener, under St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions First Mortgage", and

Whereas, the said Principals have prosecuted an appeal to the United States Circuit Court of Appeals for the Eighth Circuit, from the said decree entered herein.

Now, Therefore, The Condition Of This Obligation Is Such, That if the said Principals shall prosecute their appeal to effect and answer all costs if they fail to make their plea good, then this Obligation to be void, otherwise to remain in full force and effect.

BANKERS TRUST COMPANY, (L. S.)
(Seal) By Brenton Welling,
Vice President (L. S.)

Attest:

W. C. Meyers,
Assistant Secretary.

WILLIAM H. BIXBY,
By W. B. Deans, Agent (L. S.)
As Trustees aforesaid.

AMERICAN SURETY COMPANY OF NEW YORK,
(Seal) By: Leon Sekeson,
Resident Vice President.

Attest:

M. S. Godwin,
Resident Assistant Secretary.

877165D

Principal's Acknowledgment—If a Corporation

State of New York,
County of New York,
City of New York—ss.

On this 25th day of July, in the year 1934, before me personally came Brenton Welling, to me known, who, being by me duly sworn, did depose and say: that he resides in New York, New York, that he is the Vice President of Bankers Trust Company, the corporation described in and which exe-

cuted the within instrument; that he knows the al of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

THOMAS D. MUMFORD,
Notary Public, Nassau County,
Certificate Filed in New York Co. No. 955
New York County Register's No. 5-M-579
Commission Expires March 30, 1935.

Principal's Acknowledgment—If Individual or Firm

State of Missouri,
City of St. Louis—ss.

On this 26th day of July, 1934, before me personally appeared William B. Dean, to me known to be the person who executed the attached instrument on behalf of William H. Bixby, Trustee, as Agent, and who being by me duly sworn did depose and say that he was duly authorized to execute the said bond as Agent and Attorney-in-Fact for said William H. Bixby, Trustee, and did acknowledge that he executed the same as the free act and deed of said William H. Bixby, Trustee.

EDWARD N. SANDHOFER,
(Seal) Notary Public.

My commission expires April 19, 1936.

Surety Company's Acknowledgment.

State and County of New York—ss.:

On this 25th day of July, 1934, before me personally came Leon Sekeson to me known to be a Resident Vice-President of The American Surety Company of New York, the corporation described in and which executed the annexed bond of Bankers Trust Company and William H. Bixby, etc., as surety thereon, who being by me duly sworn, deposes and says, that he resides in the City of New York, and that he is a Resident Vice-President of the American Surety Company of New York, and knows the corporate seal thereof; that said Company is duly and legally incorporated under the laws of the State of New York; that said Company has complied with the provisions of the Act of Congress of August 13th, 1894, and as amended March 23, 1910, allowing certain corporations to be accepted as surety on bonds; that the seal affixed to the annexed bond of Bankers Trust Com-

pany and William H. Bixby, etc., is the corporate seal of the American Surety Company of New York and was thereto affixed by order and authority of the Board of Trustees of said Company; and that he signed his name thereto by like order and authority as Resident Vice-President of said Company; and that he is acquainted with M. S. Godwin, and knows him to be a Resident Assistant Secretary of said Company; and that the signature of said M. S. Godwin subscribed to said bond is in the genuine handwriting of said M. S. Godwin and was thereto subscribed by order and authority of said Board of Trustees, and in the presence of said deponent; and that the assets of said Company, unincumbered and liable to execution, exceed its claims, debts and liabilities, of every nature whatsoever, by more than the sum of Five Million Dollars, ($5,000,000.00).

LEON SEKESON.

Sworn to, acknowledged and subscribed before me this 25th day of July, 1934.

R. J. McLAUGHLIN,
Notary Public, New York County No. 87,
Reg. No. 5-Mc-79
Certificate filed in Bronx Co. No. 4, Reg.
No. 18-Mc-35
Kings Co. No. 12, Reg. No. 5052
Term Expires March 30th, 1935

Copy of Extract from Record Book of the Board of Trustees.

"Resolved, That the Resident Vice-Presidents be and they hereby are, and each of them is hereby, authorized and empowered to execute and to deliver and to attach the seal of the Company to any and all obligations for or on behalf of the Company, such obligations, however, to be attested in every instance by a Resident Assistant Secretary."

State and County of New York—ss:

I, M. S. Godwin, Resident Assistant Secretary of the American Surety Company of New York, do hereby certify that I have compared the foregoing extract from the Record Book of the Board of Trustees of the American Surety Company of New York, with the original record of said Board, and that the same is a correct extract therefrom as it appears of record and is set forth and contained in said Record Book; and I further certify that said resolution has not been revoked or rescinded.

Given under my hand and the seal of the Company, at the City of New York, this 25th day of July, 1934.

M. S. GODWIN,
(Seal) Resident Assistant Secretary.

(Endorsed): Costs bond on Appeal. Filed in U. S. Circuit Court of Appeals on July 30, 1934, E. E. Koch, Clerk.

---

441 (Order of U. S. Circuit Court of Appeals Approving Bond on Appeal.)

In The United States Circuit Court of Appeals for the Eighth Circuit.

In the Matter of

Missouri Pacific Railroad Company, Debtor.

In Proceedings for the Reorganization of a Railroad.

Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage Due May 1, 1933, appellants, having presented their appeal bond on their appeal from a decree entered in the United States District Court for the Eastern Judicial District of Missouri, Eastern Division, on the 6th day of July, 1934, it is hereby

Ordered that the said appeal bond be and the same hereby is approved.

July 30, 1934.

---

443 (Citation on Appeal Allowed by U. S. Circuit Court of Appeals, and Service.)

In The United States Circuit Court of Appeals for the Eighth Circuit.

In the Matter of

Missouri Pacific Railroad Company, Debtor.

The United States of America,

To Reconstruction Finance Corporation, a corporation, United States of America, Guaranty Trust Company of New York, and Benjamin F. Edwards, Trustees under First and Refunding Mortgage of the Missouri Pacific Railroad Company, and L. W. Baldwin and Guy A. Thompson, Trustees in Reorganization for the Missouri Pacific Railroad Company,—Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, in the City of St. Louis, Missouri, forty (40) days from and after the day this citation bears date, pursuant to an appeal filed in the Clerk's office of the United States Circuit Court of Appeals for the Eighth Circuit, wherein the Bankers Trust Company and William H. Bixby, Trustees of the St. Louis, Iron Mountain & Southern Railway Company River & Gulf Divisions First Mortgage, due May 1, 1933, are appellants, and you are appellees, to show cause, if any there be, why the decree of the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri, construing the Gold Clause contained in the bonds pleaded by the Bankers Trust Company and W. H. Bixby and entered on July 6, 1934 as in said appeal men-
444 tioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable John B. Sanborn, Presiding Judge of the United States Circuit Court of Appeals in and for the Eighth Circuit, this 30th day of July, 1934.

JOHN B. SANBORN,
Presiding Judge, Circuit Court of Appeals for the Eighth Circuit.

Received a copy of the above Citation this 2nd day of August, 1934.

RECONSTRUCTION FINANCE CORPORATION, a corporation,
By Stanley Reed, Gen. Counsel,
C. M. Clay, Counsel,
Max O'Rell Truitt & Green,
Henry & Remmers,
Attorneys for the Reconstruction Finance Corporation.

UNITED STATES OF AMERICA,
By Harry C. Blanton,
U. S. Attorney, Eastern Dist. of Mo.
Irwin Sales, Asst. U. S. Atty.
Attorneys for United States of America.

GUARANTY TRUST COMPANY OF NEW YORK, and
BENJAMIN F. EDWARDS,
Trustees under the First and Refunding Mortgage of the Missouri Pacific Railroad Company.

By Nagel, Kirby, Orrick & Shepley,
Attorneys for Guaranty Trust Company of New York and Benjamin F. Edwards, Trustees under the First and Refunding Mortgage of the Missouri Pacific Railroad Company.

L. W. BALDWIN and
GUY A. THOMPSON,
Trustees in Reorganization of the Missouri Pacific Railroad Company.
By Edw. J. White,
Attorney for L. W. Baldwin and Guy A. Thompson, Trustees in Reorganization of the Missouri Pacific Railroad Co.

(Endorsed): Citation. Filed in U. S. Circuit Court of Appeals on August 2, 1934, E. E. Koch, Clerk.

---

446 (Order of U. S. Circuit Court of Appeals Extending Time to File Transcript on Appeal Allowed by it.)

In The United States Circuit Court of Appeals for the Eighth Circuit.

Bankers Trust Company, et al., Trustees, etc., Appellants,
No. 10071. vs.
Reconstruction Finance Corporation, et al., Appellees.

Upon application, and for good cause shown, it is

Ordered that the Bankers Trust Company and William H. Bixby, as Trustees of the St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions First Mortgage Due May 1, 1933, be granted further time to file Transcript; and

Ordered that the time for filing same be and is hereby extended to and including the first day of October, 1934.

September 6, 1934.

WILBUR F. BOOTH,
Judge of the United States Circuit Court of Appeals for the Eighth Circuit.

(Endorsed): Order extending time for filing transcript. Filed in U. S. Circuit Court of Appeals on September 6, 1934, E. E. Koch, Clerk.

No. 471. October term, 1934

THE UNITED STATES OF AMERICA, RECONSTRUCTION FINANCE CORPORATION, et al., petitioners

vs.

BANKERS TRUST COMPANY AND WILLIAM H. BIXBY, TRUSTEES

Order allowing certiorari

Filed November 5, 1934

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted, and the case is assigned for argument immediately following No. 270.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Supreme Court of the United States

No. 472. October term, 1934

THE UNITED STATES OF AMERICA, RECONSTRUCTION FINANCE CORPORATION, et al., petitioners

vs.

BANKERS TRUST COMPANY AND WILLIAM H. BIXBY, TRUSTEES

Order allowing certiorari

Filed November 5, 1934

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted, and the case is assigned for argument immediately following No. 270.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE: 1934

FILE COPY

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CHARLES ELMORE C

IN THE

Supreme Court of the United States

OCTOBER TERM, 1934.

No. 270.

NORMAN C. NORMAN,

Petitioner,

vs.

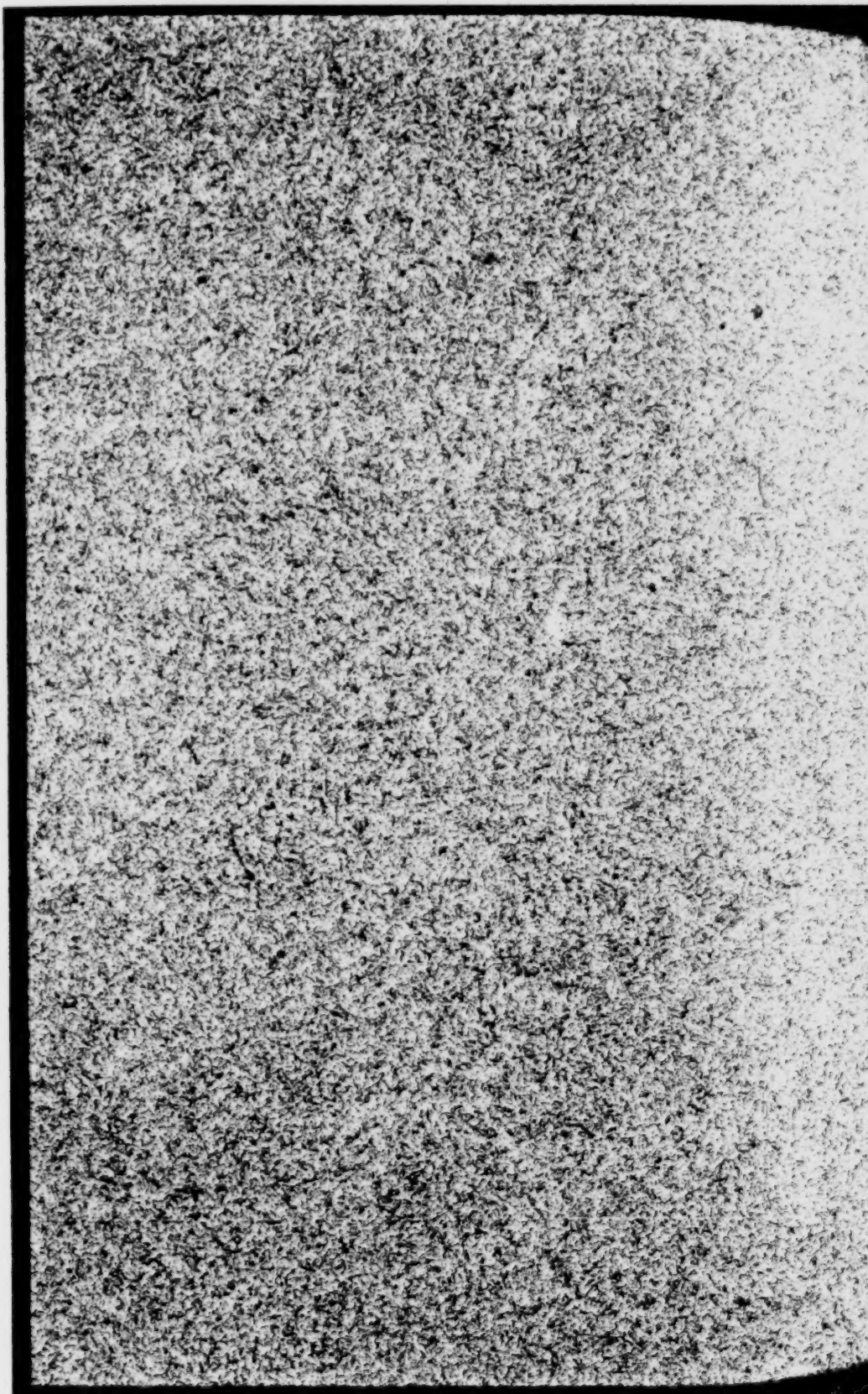
THE BALTIMORE AND OHIO RAILROAD COMPANY,

Respondent.

MOTION TO ADVANCE.

EMANUEL REDFIELD,
DALTON DWYER,
Attorneys for Petitioner.
No. 420 Lexington Avenue,
New York, N. Y.

BATAVIA TIMES, LAW PRINTERS,
BATAVIA, N. Y.



Supreme Court of the United States

OCTOBER TERM, 1934.

No. 270.

NORMAN C. NORMAN,

Petitioner,

against

THE BALTIMORE AND OHIO RAILROAD COMPANY,

Respondent.

Motion to Advance.

IT IS STIPULATED AND AGREED by counsel for the respective parties hereto, that notice of motion for October 1st, 1934 to advance the above entitled cause is hereby waived.

Dated, New York, September 25, 1934.

EMANUEL REDFIELD,
Counsel for Petitioner.

FREDERICK H. WOOD,
Counsel for Respondent.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934.

No. 270.

NORMAN C. NORMAN,

Petitioner,

against

THE BALTIMORE AND OHIO RAILROAD COMPANY,

Respondent.

Comes now the petitioner in the above entitled cause, the respondent waiving notice, as evidenced by stipulation of counsel dated the 25th day of September, 1934, signed and filed herewith, and moves the Court to advance the above entitled cause for hearing to an early day, convenient to the Court, during the present term, and the reasons relied upon for the advancement are:

That this action involves a construction of the standard "gold clause" contained in obligations and also the constitutionality of Public Resolution No. 10 of the Seventy-Third Congress. The questions involved are of great public importance and involve the stability of multitudes of similar contracts and the currency policies of the United States that will be affected by a decision of this Court. It is of urgent public importance that these questions be immediately resolved by this Court in order that both creditors and

debtors may be assured of their rights and obligations under the numerous similar contracts already in existence.

WHEREFORE, petitioner prays that the case be advanced upon the calendar and assigned for hearing at an early date.

September 25, 1934.

Respectfully submitted,

EMANUEL REDFIELD,
Counsel for Petitioner.

FILE COPY

FILED
AUG 8 1934
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1934.

No. 270

NORMAN C. NORMAN,

Petitioner,

vs.

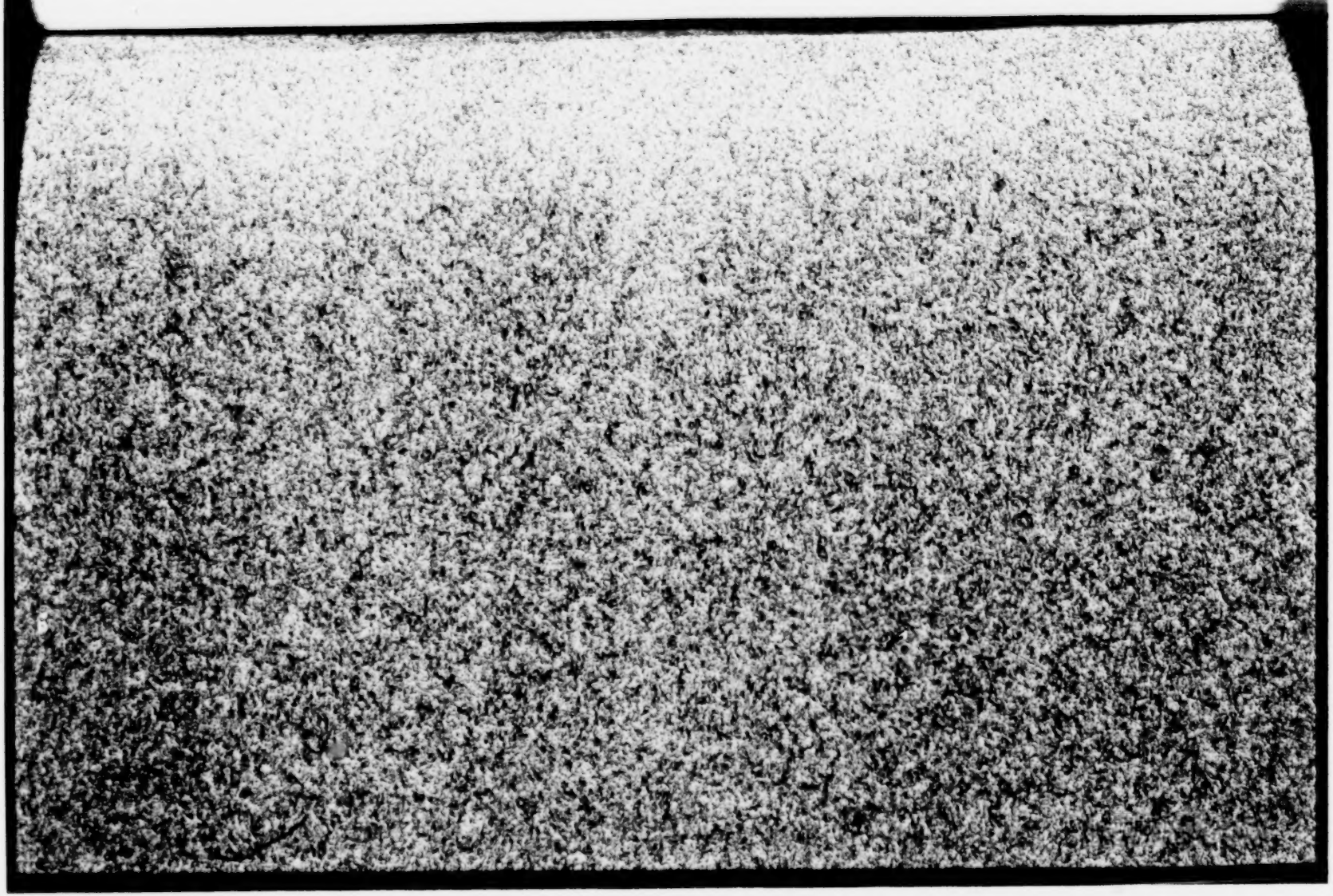
THE BALTIMORE AND OHIO RAILROAD COMPANY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK.

EMANUEL REDFIELD,
DALTON DWYER,
Attorneys for Petitioner.
No. 420 Lexington Avenue,
New York, N. Y.

BATAVIA TIMES, LAW PRINTERS,
BATAVIA, N. Y.



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IN THE

Supreme Court of the United States

OCTOBER TERM, 1934.

No.

NORMAN C. NORMAN,

Petitioner,

vs.

THE BALTIMORE AND OHIO RAILROAD COMPANY,

Respondent.

Petition for a Writ of Certiorari to the Supreme Court of the State of New York.

The Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

NORMAN C. NORMAN respectfully prays that a writ of certiorari issue to review a judgment of the Supreme Court of the State of New York, County of New York, in the above case, entered July 9th, 1934, upon the remittitur of the Court of Appeals of the State of New York affirming a judgment of the Appellate Division of the Supreme Court of the State of New York, which affirmed a judgment of the said Supreme Court of the State of New York.

A certified transcript of the record in the case including the proceedings in said Court of Appeals is furnished herewith, in accordance with Rule 38, par. 1 of the rules of this Court.

Statement.

On the first day of February, 1930, the petitioner purchased a bond of the Baltimore and Ohio Railroad Company, in the nominal sum of $1,000.00, containing the usual gold clause, that the principal and interest when they matured were payable in gold coin of the United States of America of or equal to the standard of weight and fineness existing on February 1, 1930. (R. 6.)

By the terms of the bond the Baltimore and Ohio Railroad Company agreed to pay to the holder, interest at the rate of four and one-half per cent per annum, payable semi-annually on the first days of February and August of each year, until 1960, when the bond matured. Coupons were attached to the bond for interest payments, which were to be presented and surrendered to the respondent. (R. 6.)

On February 1, 1934, the petitioner duly presented one of the said coupons, maturing on said date, which called for the payment of the nominal sum of $22.50, payable in gold as above set forth. (R. 4.) He demanded payment in gold, or if such payment were impossible, then payment by legal tender in the equivalent of gold. (R. 4.) The equivalent would be $38.10, because by the "Gold Reserve Act of 1934" (See Appendix B) and the proclamation of the President of the United States issued pursuant to it on January 31, 1934, (See Appendix C) the standard gold dollar was fixed to consist of 15 5/21 grains weight, nine-tenths fine, whereas the weight on February 1, 1930, was 25.8 grains, nine-tenths fine. (R. 4.)

The respondent refused to pay gold or its equivalent, (R. 4) but offered merely the nominal amount of the coupon, in coin or currency of the United States, other than gold coin and gold certificates. (R. 10.) This action was therefore begun in the Supreme Court of the State of New York demanding that the petitioner should be awarded a judgment for the sum of $22.50 in gold coin of the United States of the standard of weight and fineness existing on February 1, 1930, or in the alternative for $38.10, representing the equivalent under the standard of weight and fineness existing on February 1, 1930. (R. 5.)

The answer of the Baltimore & Ohio Railroad Company admitted all the allegations of the complaint (R. 9) but set up as an affirmative defense that by Public Resolution No. 10 of the Seventy-third Congress (See Appendix A) and other acts of Congress and the executive action pursuant thereto, it was prevented and prohibited from fulfilling its contract, and that it was authorized and required to pay only legal tender, dollar for dollar, in the nominal and face amount of the bond and coupon and that it offered to pay same to petitioner. The petitioner, in his reply admitted that such offer was made, but was refused by him. (R. 9.)

The petitioner moved to strike out the affirmative defense on the ground that Public Resolution No. 10 was unconstitutional and for judgment on the pleadings. (R. 2.) Respondent also moved for judgment on the pleadings. (R. 11.) Petitioner's motion to strike out the affirmative defense was denied on the ground that Public Resolution No. 10 is constitutional, and a judgment rendered in favor of petitioner for $22.50,

the face amount of the coupon. (R. 12.) Under the pleadings, plaintiff was concededly entitled to a judgment in this amount. The judgment, therefore, although nominally in favor of petitioner, was actually in favor of respondent, since for an amount concededly due petitioner under any theory of the case.

The petitioner having felt aggrieved that he did not receive more than the nominal sum of $22.50 appealed to the Appellate Division of the said Supreme Court. (R. 1.)

That court affirmed the order and judgment of the lower court, one justice not participating. (R. 14.) Petitioner then appealed to the Court of Appeals. The Court of Appeals affirmed the lower Court, one judge dissenting, and two not participating. (R. 16.) An opinion was written by the Chief Judge (R. 20) upholding Public Resolution as constitutional. Judgment was accordingly entered in the Supreme Court of the State of New York on the remittitur of the Court of Appeals. (R. 18, 19.)

Reasons for Granting the Writ.

1. The decision of the Court below, a State court, should be reviewed, because it has decided a federal question of substance not heretofore determined by this court. This court has never passed upon the constitutionality or effect of Public Resolution No. 10 of the Seventy-third Congress. It is a federal question of substance which involves the validity of the "gold clauses" contained in billions upon billions of dollars in private obligations.

2. The decision of the court below should be reviewed because its interpretation of the contract for payment in gold is not in accord with the applicable decisions of this court. This court previously held that obligations calling for payment in specie must be discharged by such payment. (Bronson vs. Rodes, 7 Wall. 229; Trebilcock vs. Wilson, 12 Wall. 229.)

3. The decision of the court below should be reviewed because it decided a federal question of substance, not heretofore passed upon by this court. This court has never decided whether payment in legal tender of an amount equivalent to the value of the specie, when payment in specie is impossible to perform, can be required as a discharge of the obligation. This court in Butler vs. Horwitz, 7 Wall. 258 has intimated that such payment could be required as a discharge of the obligation.

WHEREFORE, your Petitioner respectfully prays that a Writ of Certiorari be issued out of and under the seal of this Court, directed to the Supreme Court of the State of New York, New York County, commanding said Court to certify and send to this Court on a day to be designated, a full and complete transcript of the record and of all proceedings of the Court of Appeals had in this cause, to the end that this cause may be reviewed and determined by this court; that the judgment of court below be reversed, and that the Petitioner be granted such other and further relief as may seem proper.

NORMAN C. NORMAN,
By EMANUEL REDFIELD,
Attorney for Petitioner.

July 27, 1934.

BRIEF IN SUPPORT OF PETITION.

Opinion Below.

The opinion of the Court of Appeals (R. 20) is reported in 265 N. Y. 37. The said Supreme Court of the State of New York and the Appellate Division thereof did not write any opinions.

Jurisdiction.

The jurisdiction of this court is invoked under Section 237 (b) of the Judicial Code as amended by the Act of February 13, 1925 (28 U. S. C. Sec. 344) since this is a cause wherein a final judgment has been rendered or passed on by the highest court of a State in which a decision would be had where is drawn in question the validity of a statute of the United States. The date of the judgment of the court below to be reviewed is July 9, 1934.

Statement of the Case.

A statement of the case appears in the foregoing petition for the writ, and for the sake of brevity is here omitted.

Specification of Errors.

1. That the court below erred in denying petitioner's right to demand the payment of gold coin of the United States of the weight and fineness existing on February 1, 1930, or the equivalent thereof under a true construction of the "gold clause" contained in the obligation.

2. The court below erred in holding that Public Resolution No. 10 of the Seventy-third Congress was constitutional and within the power conferred upon Congress under the United States Constitution and was not a violation of the Tenth Amendment thereof.

3. The court below erred in holding that Public Resolution No. 10 did not deprive the petitioner of his property without due process of law by impairing the obligation of his contract, taking his property for a private purpose and without compensation, denying him the equal protection of the laws, and by the unreasonable exercise of any power Congress might possess with regard to the subject matter.

4. That the court below erred in affirming the decisions of the said Supreme Court of the State of New York and of the Appellate Division thereof holding that petitioner was entitled to recover only $22.50 in legal tender, and denying petitioner the right to recover $22.50 in gold of the weight and fineness existing on February 1, 1930, or the equivalent thereof in legal tender, and in not holding to the contrary.

Argument.

POINT I.

The gold clause implies a payment in the equivalent of gold in the event performance with gold is impossible.

Under previous decisions of this court, obligations specifically requiring payment in specie were held dis-

chargeable only by the payment of gold and silver. It was held to be effective to that extent before and after the Legal Tender Act made paper money a medium for the discharge of obligations (Bronson vs. Rodes, 7 Wall. 229; Trebilcock vs. Wilson, 12 Wall. 687).

But at present the situation is different, because payment with gold cannot be performed, ownership of gold having been prohibited. Since payment in gold is impossible to perform, it is submitted, that the parties by their agreement had intended such performance by payment of an equivalent. Otherwise, it would mean that the respondent does not have to pay at all. The latter construction would be intolerable both from an equitable and economic view. The highest court of Great Britain recently held that a true construction of such obligation required payment in the equivalent of the value of gold. Feist vs. Société Interconmunale Belge D'Electricité, 150 L. T. Rep. 41 (1933). See also, Ortega vs. Triay, 260 U. S. 110, New York Central R. R. Co. vs. Gray, 239 U. S. 583.

POINT II.

Public resolution No. 10 of the Seventy-third Congress is unconstitutional.

The powers sought to be exercised by Congress are beyond the powers delegated to it by the Constitution and are reserved to the States. Nowhere in the Constitution can there be found any provision granting to Congress the power to invalidate the mode of payment of private contracts nor limit the extent of the obligation. Congress merely received the pow-

er to coin money, *i. e.*, designate what object in existence shall pass as currency. This is true both as to express and implied powers.

In that respect, it is to be distinguished from the decision in Knox v. Lee, 12 Wall. 651 and was so argued in the courts below. We submit that there is a vast difference between stating what object is currency, and stating what contracts calling for payment in a certain form shall no longer be payable in that manner, thereby destroying the obligation. The court below recognized that difficulty in its opinion (R. 21), and felt that the question should be resolved by this Court.

Assuming that the object of the law is legitimate, as Congress announced: that gold clauses interfered with its power to control the currency, the petitioner nevertheless submits that the means adapted for that purpose do not bear a fair relation to the end, and are not "plainly adapted." Since no power exists in Congress to enact the law, then no new power was created because of an emergency. Home Building & Loan Association vs. Blaisdell, 290 U. S. 54. Furthermore, there is no limitation of time here for the duration of the law. Worthen vs. Thomas, Adv. Op. Vol. 78, p. 975, 54 Sup. Ct. Rep. 816.

This court, too, in a number of cases has held that Congress cannot deprive the States of their reserved powers by subterfuge. Hammer vs. Dagenhart, 247 U. S. 251; Kidd vs. Pearson, 128 U. S. 1; United States vs. Chicago, etc. R. R. Co., 282 U. S. 311; United States vs. Fox, 95 U. S. 670; Bailey vs. Drexel Furniture Company, 259 U. S. 20.

3. The court below erred in refusing to hold Public Resolution No. 10 unconstitutional, in that it deprived the petitioner of his property without due process of law in violation of the Fifth Amendment of the United States Constitution. The public resolution without any warning made illegal that which had been legal and upon which persons relied in previously creating contracts to the extent of approximately one hundred billion dollars. Surely, under such circumstances, there could not be a "prophetic discernment" that such contracts would be invalidated.

The legislation also takes the petitioner's property and gives it to his debtor without compensation. We make no contention about that part of the resolution that pertains to public debts. We do, however assert that the nullification of the "gold clause" transferred and took petitioner's property for the benefit of his debtor. In so doing, Congress also made an unreasonable classification. McCray vs. United States, 195 U. S. 27, 61; Billings vs. United States, 232 U. S. 261, 283.

Conclusion.

It is respectfully submitted that the writ should be allowed.

EMANUEL REDFIELD,
DALTON DWYER,
Attorneys for the Petitioner.

July 27th, 1934.

Appendix A.

Public Resolution No. 10 of the Seventy-third Congress, Approved June 5, 1933.

"JOINT RESOLUTION

To assure uniform value to the coins and currencies of the United States.

Whereas the holding of or dealing in gold affect the public interest, and are therefore subject to proper regulation and restriction; and

Whereas the existing emergency has disclosed that provisions of obligations which purport to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby, obstruct the power of the Congress to regulate the value of the money of the United States, and are inconsistent with the declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in the payment of debts. Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. Any such provision contained in any law authorizing obligations to be issued by or

under authority of the United States, is hereby repealed, but the repeal of any such provision shall not invalidate any other provision or authority contained in such law.

(b) As used in this resolution, the term 'obligation' means an obligation (including every obligation of and to the United States, excepting currency) payable in money of the United States; and the term 'coin or currency' means coin or currency of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations.

Sec. 2. The last sentence of paragraph (1) of subsection (b) of section 43 of the Act entitled 'An Act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes', approved May 12, 1933, is amended to read as follows:

'All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations) heretofore or hereafter coined and issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues, except that gold coins, when below the standard weight and limit of tolerance provided by law for the single piece, shall be legal tender only at valuation in proportion to their actual weight.'"

Appendix B.

Gold Reserve Act of 1934.

(Public—No. 87—73d Congress, Approved January 30, 1934)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. That the short title of this Act shall be the "Gold Reserve Act of 1934."

SECTION 2. (*a*) Upon the approval of this Act all right, title, and interest, and every claim of the Federal Reserve Board, of every Federal Reserve bank, and of every Federal Reserve agent, in and to any and all gold coin and gold bullion shall pass to and are hereby vested in the United States; • • •

• • • • •

SECTION 3. The Secretary of the Treasury shall, by regulations issued hereunder, with the approval of the President, prescribe the conditions under which gold may be acquired and held, transported, melted or treated, imported, exported, or earmarked: (*a*) for industrial, professional, and artistic use; (*b*) by the Federal Reserve banks for the purpose of settling international balances; and, (*c*) for such other purposes as in his judgment are not inconsistent with the purposes of this Act. Gold in any form may be acquired, transported, melted or treated, imported, exported, or earmarked or held in custody for foreign or domestic account (except on behalf of the United States) only to the extent permitted by, and subject to the conditions prescribed in, or pursuant to, such regulations. • • •

• • • • •

SECTION 5. No gold shall hereafter be coined, and no gold coin shall hereafter be paid out or delivered by the United States: *Provided, however,* That coinage may continue to be executed by the mints of the United States for foreign countries in accordance with the Act of January 29, 1874 (U. S. C., title 31, sec. 367). All gold coin of the United States shall be withdrawn from circulation, and, together with all other gold owned by the United States, shall be formed into bars of such weights and degrees of fineness as the Secretary of the Treasury may direct.

* * * * *

SECTION 12. Paragraph (*b*) (2), of section 43, title III, of the Act approved May 12, 1933 (Public, Numbered 10, Seventy-third Congress) is amended by adding two new sentences at the end thereof, reading as follows:

> "Nor shall the weight of the gold dollar be fixed in any event at more than 60 per centum of its present weight. The powers of the President specified in this paragraph shall be deemed to be separate, distinct, and continuing powers, and may be exercised by him, from time to time, severally or together, whenever and as the expressed objects of this section in his judgment may require, except that such powers shall expire 2 years after the date of enactment of the Gold Reserve Act of 1934 unless the President shall sooner declare the existing emergency ended, but the President may extend such period for not more than 1 additional year after such date by proclamation recognizing the continuance of such emergency."

* * * * *

SECTION 13. All actions, regulations, rules, orders, and proclamations heretofore taken, promulgated, made or issued by the President of the United States

or the Secretary of the Treasury, under the Act of March 9, 1933, or under section 43 or section 45 of title III of the Act of May 12, 1933, are hereby approved, ratified, and confirmed.

* * * * *

Appendix C.

A Proclamation
By the President of the United States of America

* * * * *

WHEREAS, I find, from my investigation, that, in order to stabilize domestic prices and to protect the foreign commerce against the adverse effect of depreciated foreign currencies, it is necessary to fix the weight of the gold dollar at 15 5/21 grains nine-tenths fine.

NOW, THEREFORE, be it known that I, FRANKLIN D. ROOSEVELT, President of the United States, by virtue of the authority vested in me by Section 43, Title III of said Act of May 12, 1933, as amended, and by virtue of all other authority vested in me, do hereby proclaim, order, direct, declare and fix the weight of the gold dollar to be 15 5/21 grains nine-tenths fine, from and after the date and hour of this proclamation. The weight of the silver dollar is not altered or affected in any manner by reason of this proclamation.

This proclamation shall remain in force and effect until and unless repealed or modified by act of Congress or by subsequent proclamation; and notice is hereby given that I reserve the right by virtue of the authority vested in me to alter or modify this proc-

lamation as the interest of the United States may seem to require.

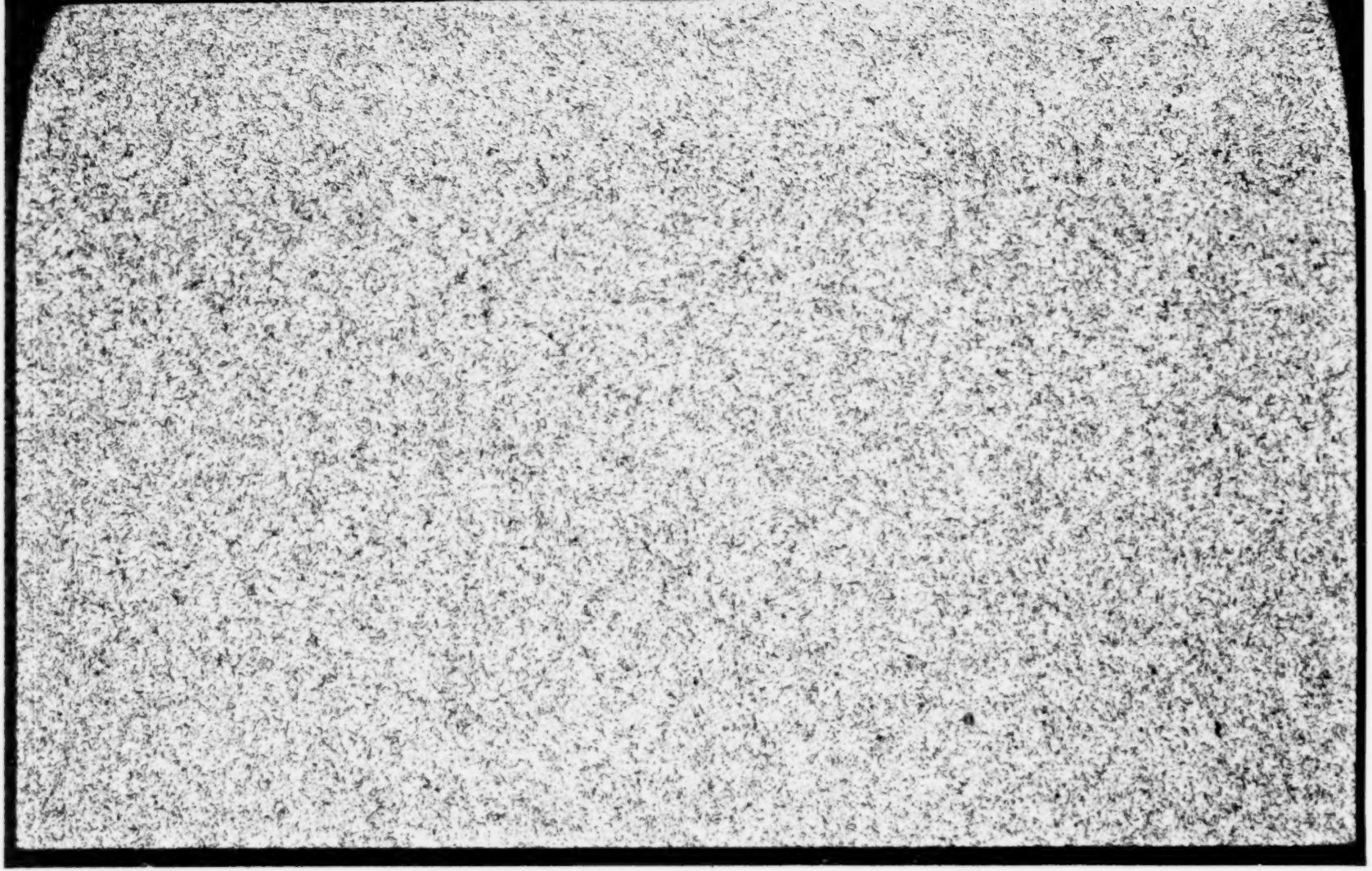
IN WITNESS WHEREOF I have hereunto set my hand and have caused the seal of the United States to be affixed.

DONE in the City of Washington at 3:10 o'clock in the afternoon, Eastern Standard Time, this 31st day of January, in the year
(SEAL) of our Lord one thousand nine hundred and thirty-four, and of the Independence of the United States the one hundred and fifty-eighth.

FRANKLIN D. ROOSEVELT.

By the President:
CORDELL HULL,
Secretary of State.

Approved and effective January 31, 1934.



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In the Supreme Court of the United States

OCTOBER TERM, 1934

NOS. ——

UNITED STATES OF AMERICA, RECONSTRUCTION FINANCE CORPORATION, et al., petitioners

v.

BANKERS TRUST COMPANY AND WILLIAM H. BIXBY, Trustees

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF

PETITION

The Solicitor General, on behalf of the United States and the Reconstruction Finance Corporation, prays that writs of certiorari issue to bring before this Court the causes now pending in the Circuit Court of Appeals for the Eighth Circuit which are there entitled *Bankers Trust Company et al., Appellants* v. *Reconstruction Finance Corporation et al.,* Nos. 10071 and 10116, which have

not been submitted to, heard, or decided by that court, and to which the United States and the Reconstruction Finance Corporation are parties.

STATEMENT

The sole question involved in the proceeding below is the validity of the so-called "gold clause" contained in certain thirty-year first-mortgage bonds of the St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions, issued May 1, 1903, in view of the Joint Resolution of Congress of June 5, 1933 (c. 48, 48 Stat. 112), the Executive Orders and Regulations relating to the holding and transfer of gold and foreign-exchange transactions therein, and the Gold Reserve Act of 1934 (approved January 30, 1934), all of which are copied in the Appendix, *infra*, pp. 17–36.

On March 31, 1933, the debtor railroad filed a petition in bankruptcy under Section 77 of the Bankruptcy Act, as amended (R. 3). The petition was allowed by the District Court on the same day (R. 5). Both the petitioners and the respondents became parties to this cause by petitions for leave to intervene, duly allowed, in the District Court (R. 52, 60, 70, 71). The respondents are trustees under the first mortgage aforesaid. The Reconstruction Finance Corporation is a creditor of the railroad in the aggregate amount of $23,134,800, holding as collateral security for its claim bonds which are junior to those secured by the above-mentioned mortgage (R.

61). The United States is the sole stockholder of the Reconstruction Finance Corporation and is further interested by virtue of a claim against the railroad for unpaid taxes amounting to approximately $5,000,000 (R. 82).

The trustees demanded payment in gold coin or its equivalent (R. 58). The District Court for the Eastern District of Missouri found that payment in gold or its equivalent was "impossible in fact and in law" (R. 133) and that—

> the pendency, undisposed of, of the question thus presented interposes a serious obstacle to the continued orderly administration of the affairs of the Debtor Railroad and impedes, delays, hinders and obstructs the reorganization of said Railroad.

It further determined and declared that the trustees and bondholders were "entitled to payment of $1,000 upon each said bond in the principal amount of $1,000, validly issued and outstanding, in such lawful money of the United States as is legal tender for the payment of debts, with interest thereon, also in such lawful money of the United States" (R. 133).

Two separate appeals were taken by the respondents from the decree of the District Court, one under Section 24 (a) and the other under Section 24 (b) of the Bankruptcy Act as amended (R. 137, 254), but the question is identical in each and there is but one record on appeal.

SPECIFICATION OF ERROR

The respondents are contending in the Circuit Court of Appeals that the District Court erred in holding the bonds to be payable at their face amount "in such lawful money of the United States as is legal tender for the payment of debts", and they have challenged the validity of the abovementioned Joint Resolution, Executive Orders, and Regulations.

REASONS FOR GRANTING THE WRITS

This Court on October 8, 1934, granted a petition for a writ of certiorari to the Supreme Court of the State of New York in the case of *Norman* v. *Baltimore and Ohio Railroad Company*, No. 270, which involves the same question of law as that presented in the court below. In view of the widespread effect and possible consequences, both to the Government (including governmental corporations) and to the economic structure of the entire country, of the approval of the claims made in these cases for payment in gold coin or its equivalent, it appears meet and proper that the United States should be accorded the fullest opportunity to participate both by brief and by oral argument in the presentation of the issues and legal principles involved. It is not believed that the exigencies would be fully met by participation as *amicus curiae* in the *Norman* case, assuming that consent and leave therefor should be given.

Billions of dollars of Government securities (more than 21 billions as of March 1, 1934) now outstanding are affected by the issue. Billions of dollars in securities of railroads, industries, States, cities, etc., are likewise affected. Great numbers of our private citizens owe large sums of money evidenced by mortgages, notes, and other obligations containing the so-called gold clause. The total of all such gold clause obligations issued and outstanding in this country is estimated by responsible persons at from 90 to 125 billion dollars. The solvency of many citizens, industries and local governments, perhaps even the financial stability of the National Government, may be affected by the determination of this great issue. Succinctly the issue is this: *Are all these obligations to be discharged at the rate of $1.69 for each $1.00 borrowed?*

The Government has previously considered the legal questions in connection with the inauguration and execution of the challenged measures, and regards it as both a privilege and a duty to tender its full assistance to the Court.

Aside from the pendency of the *Norman* case, the issue in this case alone is of sufficient public importance and disturbing effect, while it remains unsettled, to warrant the interposition of this Court in order to accomplish a final and speedy settlement of the question. There are now pending in the various Federal courts approximately twelve railroad reorganization proceedings brought

under Section 77, and hundreds of corporate reorganization proceedings brought under Section 77 (b) of the Bankruptcy Act as amended; and, as indicated by the court below, it is impracticable to effect final plans of reorganization while bondholders are demanding settlement in gold or its equivalent and their right to do so remains undetermined by this Court. In many such cases, as in this one, the Reconstruction Finance Corporation is vitally interested as a large creditor, holding collateral whose value is dependent upon the rights of private creditors to demand payment of their obligations in gold. In addition, there are presently pending in the Court of Claims several cases against the United States involving the right to recover the alleged market value of gold payments called for in bonds and gold certificates.

Wherefore, it is respectfully submitted that this petition should be granted.

J. CRAWFORD BIGGS,
Solicitor General.

OCTOBER 1934.

As appellees in the two causes mentioned as pending in the Circuit Court of Appeals for the Eighth Circuit we respectfully join in the fore-

going petition of the Solicitor General and request allowance of the writ of certiorari as therein prayed.

L. W. BALDWIN and
GUY A. THOMPSON,
Trustees in Reorganization of the Missouri Pacific Railroad Company.

By EDW. J. WHITE,
Attorney for L. W. Baldwin and Guy A. Thompson, Trustees in Reorganization of the Missouri Pacific Railroad Co.

GUARANTY TRUST COMPANY
OF NEW YORK and
BENJAMIN F. EDWARDS,
Trustees under the First and Refunding Mortgage of the Missouri Pacific Railroad Co.

By EDWIN S. S. SUNDERLAND,
Attorney for Guaranty Trust Company of New York and Benjamin F. Edwards, Trustees under the First and Refunding Mortgage of the Missouri Pacific Railroad Company.

90373—34——2

BRIEF IN SUPPORT OF PETITION

OPINION BELOW

The opinion of the District Court (R. 109) is reported in 7 F. Supp. 1.

JURISDICTION

The decree of the District Court was entered July 6, 1934 (R. 131). Separate appeals were allowed by the District Court on July 28, 1934, and by the Circuit Court of Appeals on July 30, 1934 (R. 137, 254). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the Joint Resolution of Congress of June 5, 1933, is valid and whether, in consequence thereof and of the Executive Orders and Regulations relating to the holding and transfer of gold and foreign exchange transactions therein, and the Gold Reserve Act of 1934 (all set out in the Appendix, *infra*), mortgage bonds issued in 1903, maturing May 1, 1933, and containing a so-called gold clause, are dischargeable as to principal and interest at their face amount, dollar for dollar, in any lawful money of the United States, where the debtor and its properties are being administered in reor-

ganization proceedings brought on March 31, 1933, under Section 77 of the Bankruptcy Act, as amended, c. 204, 47 Stat. 1467, 1474.

ARGUMENT

I

ISSUANCE OF CERTIORARI AT THE PRESENT STAGE OF THE PROCEEDING IS SUPPORTED BY THE STATUTE AND BY THE RULES AND PRACTICE OF THIS COURT

Section 240 (a), Judicial Code, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 938 (U. S. C., Title 28, Sec. 347):

> In any case, civil or criminal, in a circuit court of appeals, or in the Court of Appeals of the District of Columbia, it shall be competent for the Supreme Court of the United States, *upon the petition of any party thereto,* whether Government or other litigant, to require by certiorari, *either before or after a judgment or decree by such lower court,* that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with like effect, as if the cause had been brought there by unrestricted writ of error or appeal. [Italics supplied.]

Supreme Court Rule 39:

> *Proceedings to bring up to this court on writ of certiorari* a case pending in a circuit court of appeals or the Court of Appeals of the District of Columbia, *before judgment* is given in such court, should conform, as near as may be, to the provisions of Rule

> 38; and similar reasons for granting or refusing the application will be applied. *That the public interest will be promoted by prompt settlement in this court of the questions involved may constitute a sufficient reason.* [Italics supplied.]

It is respectfully submitted that the public interest will be promoted by prompt settlement in this Court of the questions involved within the contemplation of Rule 39.

The following cases are indicative of exigencies which have in the past moved this Court to issue writs of certiorari before judgment in the Circuit Courts of Appeals:

The Three Friends, 166 U. S. 1, involving the construction of a statute dealing with the punishment of persons aiding in foreign insurrections and thus affecting our relations with a foreign country.

Forsyth v. *Hammond*, 166 U. S. 506, involving a conflict between a State and a Federal court respecting the validity of the annexation of certain land by a city.

White v. *Mechanics Securities Corporation*, 269 U. S. 283, involving suits brought, under the Trading with the Enemy Act, upon notes issued by the Imperial German Government, several cases involving the same questions of law having been taken on appeal to the Supreme Court and the entire group of cases argued together.

Royal Insurance Co. v. *Fleet Corporation*, 280 U. S. 320, 325, involving the question, also pre-

sented in other cases, whether the Suits in Admiralty Act excluded other remedies which had been invoked by the plaintiffs.

Eastern Equities Corp. v. *United States,* 282 U. S. 409, 415 (note 2), involving questions under the income tax laws which were presented in other cases then pending in the Supreme Court.

Piedmont & Northern Railway Co. v. *Interstate Commerce Commission,* 286 U. S. 299, involving the jurisdiction of the Commission over the construction of an extension of an interurban electric railroad.

See also *Degge* v. *Hitchcock,* 229 U. S. 162, 170, discussing the use of certiorari to remove a record before judgment from a court without jurisdiction.

In *Gay* v. *Ruff,* 292 U. S. 25, 30, the Court referred with approval to the practice of reviewing a case pending in and not yet decided by the Circuit Court of Appeals.

II

THE POWER OF THE COURT IS NOT AFFECTED BY THE FACT THAT THE PETITIONERS PREVAILED IN THE DISTRICT COURT

Section 240 (a) of the Judicial Code, as amended, hereinbefore quoted, specifically authorizes the issuance of the writ "upon the petition of any party." The use of these words would not be understandable if it were intended that only the losing party were authorized to petition. Furthermore, considering that promotion of the public interest by prompt settlement of the questions involved is a prime

reason for issuance of certiorari before judgment, under the interpretation of the statute embodied in Rule 39, there is no apparent justification for implying a condition that the writ must be sought by the losing party, whose interest with respect to prompt settlement might be opposed to that of the public.

The history of the statute supports this conclusion. In its original form it was a part of Section 6 of the Circuit Courts of Appeals Act of March 3, 1891, c. 517, 26 Stat. 826. That section provided that judgments or decrees of the Circuit Courts of Appeals in certain classes of cases should be final—

> excepting that in every such subject within its appellate jurisdiction the circuit court of appeals at any time may certify to the Supreme Court of the United States any questions or propositions of law concerning which it desires the instruction of that court for its proper decision. And thereupon the Supreme Court may either give its instruction on the questions and propositions certified to it, which shall be binding upon the circuit courts of appeals in such case, or it may require that the whole record and cause may be sent up to it for its consideration, and thereupon shall decide the whole matter in controversy in the same manner as if it had been brought there for review by writ of error or appeal.
>
> And excepting also that in any such case as is hereinbefore made final in the circuit court of appeals it shall be competent for

> the Supreme Court to require, by certiorari or otherwise, any such case to be certified to the Supreme Court for its review and determination with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court.

It will be observed that in its original form the statute contained no express provision concerning the mode of application for a writ of certiorari. As in the case of certification by the Circuit Court of Appeals (*Louisville, etc., Ry. Co.* v. *Pope,* 74 Fed. 1), it was evidently intended that the writ should issue primarily at the instance of the Court. The purpose of providing for review on certiorari was to supplement certification by giving to the Supreme Court an opportunity, independently of the Circuit Courts of Appeals, to determine that a question merited review by the Supreme Court.[1]

[1] The House Bill contained a provision for certification by the Circuit Court of Appeals, but not for certiorari at the instance of the Supreme Court, (21 Cong. Rec. 3402). The Senate Bill, as first introduced, provided for certiorari, in addition to certification, in cases "pending before the Cir- Court of Appeals." This was amended, on motion of Senator Evarts, in charge of the Bill, to read as it was finally enacted. Senator Evarts thus explained the reason for adding review by certiorari in cases made final in the Circuit Courts of Appeals:

"* * * I should deprecate any opinion in advance that these courts [Circuit Courts of Appeals] would not fully meet the interest and confidence that should be invited for them, but still there should be something besides a mere judgment within these courts as to what ought to be reviewed in the interest of jurisprudence and uniformity of decision, and that is that the Supreme Court shall have a right, in any of these cases that are thus made final, by certiorari to take up

The provisions for a certificate and those for certiorari in the Act of 1891 have been construed *in pari materia.* See *American Construction Co.* v. *Jacksonville, Tampa & Key West Railway Co.,* 148 U. S. 372, 384–5.

The Judicial Code of 1911 and the Judiciary Act of 1925 amended the provisions for certiorari to the Circuit Courts of Appeals. (U. S. C., Title 28, Sec. 347.) In 1911 the words "civil or criminal" and "upon the petition of any party thereto", which appear in the present law, were inserted.

The immediate occasion for amending the statute was to remove the doubt as to the right of the United States to obtain review in criminal cases. *United States* v. *Gulf Refining Co.,* 268 U. S. 542, 544–545; 46 Cong. Rec. 2134. This, however, was not the sole purpose intended to be accomplished, as indicated both by the language employed and by the following statement of the Managers on the Part of the House, annexed to the Conference Report on the Bill (46 Cong. Rec. 4001):

> The effect of this amendment is to make more clear the right of the Supreme Court of the United States by writ of certiorari to bring before it for review any case in which the judgment or decree of the circuit court of appeals is made final by the pro-

to itself for final determination this or that case, and in that way the scheme of the committee does firmly and peremptorily make a finality on such subjects as we think in their nature admit of finality, and at the same time leaves flexibility, elasticity, and openness for supervision by the Supreme Court" (21 Cong. Rec. 10222).

visions of the act, and to define more accurately the method by which such writ might be obtained.

In the Judiciary Act of 1925 the phrase "whether Government or other litigant" was added. This amendment did not limit the meaning of the phrase "any party thereto." Its purpose was to place beyond question the right of the United States to petition for certiorari in a criminal case. See the Analysis of the Bill presented by the Committee of Justices, in Hearings on S. 2060, 68th Congress, 1st Session, page 13.

The amendments to the Act of 1891 have thus not limited its original scope, but have emphasized the wide latitude of the Court in exercising the power to require cases to be brought before it from the Circuit Courts of Appeals by writ of certiorari. This latitude may be contrasted with the historically limited right of parties to take an appeal. Thus, for example, although an appeal may be taken only from final judgments or decrees, even where the statute does not expressly so require, certiorari may issue to review interlocutory orders or decrees even where the statute contains no such express provision. Compare *Slaker* v. *O'Connor*, 278 U. S. 188, with *Gay* v. *Ruff*, 292 U. S. 25, and cases cited therein. The present case is therefore not governed by the requirements imposed in the case of an appeal. Compare *Lindheimer* v. *Illinois Bell Telephone Co.*, 292 U. S. 151, 176.

This is not a case of a petition for review by a successful party of a judgment in his favor. There

exists an actual controversy, the prompt settlement of which will promote the public interest, within the contemplation of Rule 39. Necessarily it is only in an exceptional case that the public interest warranting certiorari is suggested by a party not aggrieved by an adverse decision. This explains the dearth of precise precedents [2] but does not bear upon the power of the Court.

CONCLUSION

The public interest will be promoted by the granting of this petition and the resultant prompt settlement in this Court of the questions involved.

Respectfully submitted.

J. CRAWFORD BIGGS,
Solicitor General.

ANGUS D. MACLEAN,
Assistant Solicitor General.

STANLEY REED,
General Counsel, Reconstruction Finance Corporation.

JOHN T. FOWLER, JR.,
PAUL A. FREUND,
Attorneys.

OCTOBER 1934.

[2] In *United States* v. *Fall*, 281 U. S. 757, the Government, after a conviction in the Supreme Court of the District of Columbia, and an appeal by the defendant to the Court of Appeals, petitioned for certiorari before argument in that court. The petition was denied without comment. The denial can be adequately explained by the probable insufficiency of the reasons advanced for granting the writ. The Government urged that the precarious health of the defendant required, in the interests of justice, a prompt settlement by this Court of the question of his guilt.

APPENDIX

EMERGENCY BANKING ACT OF 1933
[c. 1, 48 Stat. 1]

An Act To provide relief in the existing national emergency in banking, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress hereby declares that a serious emergency exists and that it is imperatively necessary speedily to put into effect remedies of uniform national application.

TITLE I

SECTION 1. The actions, regulations, rules, licenses, orders and proclamations heretofore or hereafter taken, promulgated, made, or issued by the President of the United States or the Secretary of the Treasury since March 4, 1933, pursuant to the authority conferred by subdivision (b) of section 5 of the Act of October 6, 1917, as amended, are hereby approved and confirmed.

SEC. 2. Subdivision (b) of section 5 of the Act of October 6, 1917 (40 Stat. L. 411), as amended, is hereby amended to read as follows:

> "(b) During time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, investigate, regulate, or prohibit, under

such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange, transfers of credit between or payments by banking institutions as defined by the President, and export, hoarding, melting, or earmarking of gold or silver coin or bullion or currency, by any person within the United States or any place subject to the jurisdiction thereof; and the President may require any person engaged in any transaction referred to in this subdivision to furnish under oath, complete information relative thereto, including the production of any books of account, contracts, letters or other papers, in connection therewith in the custody or control of such person, either before or after such transaction is completed. Whoever willfully violates any of the provisions of this subdivision or of any license, order, rule or regulation issued thereunder, shall, upon conviction, be fined not more than $10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both. As used in this subdivision the term 'person' means an individual, partnership, association, or corporation."

SEC. 3. Section 11 of the Federal Reserve Act is amended by adding at the end thereof the following new subsection:

"(n) Whenever in the judgment of the Secretary of the Treasury such action is necessary to protect the currency system of the United States, the Secretary of the Treasury, in his discretion, may require any or all in-

dividuals, partnerships, associations and corporations to pay and deliver to the Treasurer of the United States any or all gold coin, gold bullion, and gold certificates owned by such individuals, partnerships, associations, and corporations. Upon receipt of such gold coin, gold bullion or gold certificates, the Secretary of the Treasury shall pay therefor an equivalent amount of any other form of coin or currency coined or issued under the laws of the United States. The Secretary of the Treasury shall pay all costs of the transportation of such gold bullion, gold certificates, coin, or currency, including the cost of insurance, protection, and such other incidental costs as may be reasonably necessary. Any individual, partnership, association, or corporation failing to comply with any requirement of the Secretary of the Treasury made under this subsection shall be subject to a penalty equal to twice the value of the gold or gold certificates in respect of which such failure occurred, and such penalty may be collected by the Secretary of the Treasury by suit or otherwise."

* * * * *

EXECUTIVE ORDER OF APRIL 5, 1933

By virtue of the authority vested in me by Section 5 (b) of the Act of October 6, 1917, as amended by Section 2 of the Act of March 9, 1933, entitled "An Act to provide relief in the existing national emergency in banking, and for other purposes", in which amendatory Act Congress declared that a serious emergency exists, I, Franklin D. Roosevelt, President of the United States of America, do declare that said national emergency still

continues to exist and pursuant to said section do hereby prohibit the hoarding of gold coin, gold bullion, and gold certificates within the continental United States by individuals, partnerships, associations and corporations—and hereby prescribe the following regulations for carrying out the purposes of this order:

SECTION 1. For the purposes of this regulation, the term "hoarding" means the withdrawal and withholding of gold coin, gold bullion or gold certificates from the recognized and customary channels of trade. The term "person" means any individual, partnership, association or corporation.

SECTION 2. All persons are hereby required to deliver on or before May 1, 1933, to a Federal reserve bank or a branch or agency thereof or to any member bank of the Federal Reserve System all gold coin, gold bullion and gold certificates now owned by them or coming into their ownership on or before April 28, 1933, except the following:

(a) Such amount of gold as may be required for legitimate and customary use in industry, profession or art within a reasonable time, including gold prior to refining and stocks of gold in reasonable amounts for the usual trade requirements of owners mining and refining such gold.

(b) Gold coin and gold certificates in an amount not exceeding in the aggregate $100 belonging to any one person; and gold coins having a recognized special value to collectors of rare and unusual coins.

(c) Gold coin and bullion earmarked or held in trust for a recognized foreign government or for-

eign central bank or the Bank for International Settlements.

(d) Gold coin and bullion licensed for other proper transactions (not involving hoarding) including gold coin and bullion imported for reexport or held pending action on applications for export licenses.

SECTION 3. Until otherwise ordered any person becoming the owner of any gold coin, gold bullion, or gold certificates after April 28, 1933, shall, within three days after receipt thereof, deliver the same in the manner prescribed in Section 2; unless such gold coin, gold bullion or gold certificates are held for any of the purposes specified in paragraphs (a), (b) or (c) of Section 2; or unless such gold coin or gold bullion is held for purposes specified in paragraph (d) of Section 2 and the person holding it is, with respect to such gold coin or bullion, a licensee or applicant for license pending action thereon.

SECTION 4. Upon receipt of gold coin, gold bullion or gold certificates delivered to it in accordance with Sections 2 or 3, the Federal reserve bank or member bank will pay therefor an equivalent amount of any other form of coin or currency coined or issued under the laws of the United States.

* * * * *

SECTION 9. Whoever willfully violates any provision of this Executive Order or of these regulations or of any rule, regulation or license issued thereunder may be fined not more than $10,000, or, if a natural person, may be imprisoned for not more

than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in any such violation may be punished by a like fine, imprisonment, or both.

* * * * *

FRANKLIN D. ROOSEVELT.

EXECUTIVE ORDER OF APRIL 20, 1933

* * * * *

1. Until further order, the earmarking for foreign account and the export of gold coin, gold bullion or gold certificates from the United States or any place subject to the jurisdiction thereof are hereby prohibited, except that the Secretary of the Treasury, in his discretion and subject to such regulations as he may prescribe, may issue licenses authorizing the export of gold coin and bullion (a) earmarked or held in trust for a recognized foreign government or foreign central bank or the Bank for International Settlements, (b) imported for reexport or gold in reasonable amounts for usual trade requirements of refiners importing gold bearing materials under agreement to export gold, (c) actually required for the fulfillment of any contract entered into prior to the date of this order, by an applicant who in obedience to the Executive Order of April 5, 1933 has delivered gold coin, gold bullion or gold certificates, and (d) with the approval of the President, for transactions which he may deem necessary to promote the public interest.

* * * * *

FRANKLIN D. ROOSEVELT.

PUBLIC RESOLUTION—NO. 10—73D CONGRESS,
1ST SESS., C. 48, 48 STAT. 112

[H. J. Res. 192]

JOINT RESOLUTION

To assure uniform value to the coins and currencies of the United States

Whereas the holding of or dealing in gold affect the public interest, and are therefore subject to proper regulation and restriction; and

Whereas the existing emergency has disclosed that provisions of obligations which purport to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby, obstruct the power of the Congress to regulate the value of the money of the United States, and are inconsistent with the declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in the payment of debts. Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, *or in an amount in money of the United States measured thereby,* is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such pro-

vision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. Any such provision contained in any law authorizing obligations to be issued by or under authority of the United States, is hereby repealed, but the repeal of any such provision shall not invalidate any other provision or authority contained in such law.

(b) As used in this resolution, the term "obligation" means an obligation (including every obligation of and to the United States, excepting currency) payable in money of the United States; and the term "coin or currency" means coin or currency of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations.

SEC. 2. The last sentence of paragraph (1) of subsection (b) of section 43 of the Act entitled "An Act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes", approved May 12, 1933, is amended to read as follows:

"All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations) heretofore or hereafter coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues, ex-

cept that gold coins, when below the standard weight and limit of tolerance provided by law for the single piece, shall be legal tender only at valuation in proportion to their actual weight."

Approved, June 5, 1933, 4.40 p. m.

Executive Order of August 28, 1933

By virtue of the authority vested in me by section 5 (b) of the Act of October 6, 1917, as amended by section 2 of the act of March 9, 1933, entitled "An act to provide relief in the existing national emergency in banking and for other purpose", I, Franklin D. Roosevelt, President of the United States of America, do declare that a period of national emergency exists, and by virtue of said authority and of all other authority vested in me, do hereby prescribe the following provisions for the investigation and regulation of the hoarding, earmarking, and export of gold coin, gold bullion, and gold certificates by any person within the United States or any place subject to the jurisdiction thereof; and for the investigation and regulation of transactions in foreign exchange and transfers of credit and the export or withdrawal of currency from the United States or any place subject to the jurisdiction thereof by any person within the United States or any place subject to the jurisdiction thereof.

Sec. 2. *Definitions.*—As used in this order the term "person" means an individual, partnership, association, or corporation; and the term "the United States" means the United States and any place subject to the jurisdiction thereof.

Sec. 3. *Returns.*—Within fifteen days from the date of this order every person in possession of

and every person owning gold coin, gold bullion, or gold certificates shall make under oath and file as hereinafter provided a return to the Secretary of the Treasury containing true and complete information relative thereto, including the name and address of the person making the return; the kind and amount of such coin, bullion, or certificates held and the location thereof; if held for another, the capacity in which held and the person for whom held, together with the post-office address of such person; and the nature of the transaction requiring the holding of such coin, bullion, or certificates and a statement explaining why such transaction cannot be carried out by the use of currency other than gold certificates; provided that no returns are required to be filed with respect to—

(a) Gold coin, gold bullion, and gold certificates in an amount not exceeding in the aggregate $100 belonging to any one person;

(b) Gold coin having a recognized special value to collectors of rare and unusual coin;

(c) Gold coin, gold bullion, and gold certificates acquired or held under a license heretofore granted by or under authority of the Secretary of the Treasury; and

(d) Gold coin, gold bullion, and gold certificates owned by Federal Reserve banks.

* * * * *

SEC. 4. *Acquisition of Gold Coin and Gold Bullion.*—No person other than a Federal reserve bank shall after the date of this order acquire in the United States any gold coin, gold bullion, or gold certificates except under license therefor issued pursuant to this Executive order. * * *

The Secretary of the Treasury, subject to such further regulations as he may prescribe, shall issue licenses authorizing the acquisition of—

(a) Gold coin or gold bullion which the Secretary is satisfied is required for a necessary and lawful transaction for which currency other than gold certificates cannot be used, by an applicant who establishes that since March 9, 1933, he has surrendered an equal amount of gold coin, gold bullion, or gold certificates to a banking institution in the continental United States or to the Treasurer of the United States;

(b) Gold coin or gold bullion which the Secretary is satisfied is required by an applicant who holds a license to export such an amount of gold coin or gold bullion issued under subdivisions (c) or (d) of section 6 hereof, and

(c) Gold bullion which the Secretary, or such agency as he may designate, is satisfied is required for legitimate and customary use in industry, profession, or art by an applicant regularly engaged in such industry, profession, or art, or in the business of furnishing gold therefor.

Licenses issued pursuant to this section shall authorize the holder to acquire gold coin and gold bullion only from the sources specified by the Secretary of the Treasury in regulations issued hereunder.

SEC. 5. *Holding of Gold Coin, Gold Bullion, and Gold Certificates.*—After thirty days from the date of this order no person shall hold in his possession or retain any interest, legal or equitable, in any gold coin, gold bullion, or gold certificates situated in the United States and owned by any person subject to the jurisdiction of the United

States, except under license therefor issued pursuant to this Executive order; provided, however, that licenses shall not be required in order to hold in possession or retain an interest in gold coin, gold bullion, or gold certificates with respect to which a return need not be filed under section 3 hereof.

The Secretary of the Treasury, subject to such further regulations as he may prescribe, shall issue licenses authorizing the holding of—

(a) Gold coin, gold bullion, and gold certificates, which the Secretary is satisfied are required by the person owning the same for necessary and lawful transactions for which currency, other than gold certificates, cannot be used;

(b) Gold bullion which the Secretary, or such agency as he may designate, is satisfied is required for legitimate and customary use in industry, profession, or art by a person regularly engaged in such industry, profession, or art or in the business of furnishing gold therefor;

(c) Gold coin and gold bullion earmarked or held in trust since before April 20, 1933, for a recognized foreign government or foreign central bank or the Bank for International Settlements; and

(d) Gold coin and gold bullion imported for reexport or held pending action upon application for export licenses.

* * * * *

SEC. 9. The Secretary of the Treasury is hereby authorized and empowered to issue such regulations as he may deem necessary to carry out the purposes of this order. * * *

SEC. 10. Whoever willfully violates any provision of this Executive order or of any license, order, rule, or regulation issued or prescribed hereunder, shall, upon conviction, be fined not more than $10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.

* * * * *

FRANKLIN D. ROOSEVELT.

Order of the Secretary of the Treasury of December 28, 1933, as Amended by Order of the Secretary of the Treasury of January 11, 1934.

Whereas Section 11 of the Federal Reserve Act of December 23, 1913, as amended by Section 3 of the Act of March 9, 1933, entitled "An act to provide relief in the existing national emergency in banking, and for other purposes", provides in Subsection (n) as follows:

* * * * *

Whereas in my judgment such action is necessary to protect the currency system of the United States:

Now, therefore, I, Henry Morgenthau, Jr., Acting Secretary of the Treasury, do hereby require every person subject to the jurisdiction of the United States forthwith to pay and deliver to the Treasurer of the United States all gold coin, gold bullion, and gold certificates situated in the United States, owned by such person, except as follows:

(a) Gold bullion owned by a person now holding such gold under a license heretofore granted by or

under authority of the Secretary of the Treasury, pursuant to the executive order of August 28, 1933, relating to the hoarding, export and earmarking of gold coin, bullion, or currency and to transactions in foreign exchange;

(b) Gold coin having a recognized special value to collectors of rare and unusual coin (but not including quarter eagles, otherwise known as $2.50 pieces) unless held, together with rare and unusual coin, as part of a collection for historical, scientific, or numismatic purposes, containing not more than four quarter eagles of the same date and design and struck by the same Mint.

(c) Unmelted scrap gold sweepings in an amount not exceeding in the aggregate $100 belonging to any one person; and gold which has been put through a process of fabrication for a specific and customary industrial, professional, or ornamental use;

(d) Gold coin, gold bullion, and gold certificates owned by a Federal Reserve Bank or the Reconstruction Finance Corporation; and

(e) Gold bullion and foreign gold coin now situated in the Philippine Islands, American Samoa, Guam, Hawaii, Panama Canal Zone, Puerto Rico, or the Virgin Islands of the United States, owned by a person not domiciled or doing business in the continental United States.

SECTION 2. *Delivery.*—The gold coin, gold bullion, and gold certificates herein required to be paid and delivered to the Treasurer of the United States shall be delivered by placing the same forthwith in the custody of a Federal reserve bank or branch or a bank member of the Federal Reserve System for the account of the United States, * * *.

SECTION 3. *Payment and Reimbursement of Costs.*—Upon receipt of the confirmation signed and delivered as required under Section 2, the Secretary of the Treasury will pay for the gold coin, gold bullion, and gold certificates placed in custody for the account of the United States in accordance with Section 2, an equivalent amount of any form of coin or currency coined or issued under the laws of the United States designated by the Secretary of the Treasury. * * *

* * * * *

SECTION 5. Any individual, partnership, association, or corporation failing to comply with any requirement hereof or of any rules or regulations issued by the Secretary of the Treasury hereunder shall be subject to the penalty provided in Section 11 (n) of the Federal Reserve Act, as amended.

This order may be modified or revoked at any time.

H. MORGENTHAU, JR.,
Acting Secretary of the Treasury.

Approved:

FRANKLIN D. ROOSEVELT,
The White House.

DECEMBER 28, 1933.

ORDER OF THE SECRETARY OF THE TREASURY OF JANUARY 15, 1934

* * * * *

Whereas a reasonable time has elapsed within which any person required to deliver gold coin, gold bullion, and gold certificates could pay and deliver to the Treasurer of the United States in the manner provided in said Order of December 28, 1933 the gold coin, gold bullion, and gold certificates

situated in the United States, owned by such person; and

Whereas in my judgment such action is necessary to protect the currency system of the United States;

Now, therefore, I, Henry Morgenthau, Jr., Secretary of the Treasury, do hereby fix midnight of Wednesday, January 17, 1934, as the expiration of the period within which any gold coin, gold bullion, or gold certificates may be paid and delivered to the Treasurer of the United States in compliance with the requirements contained in such Order of December 28, 1933, as amended.

* * * * *

H. MORGENTHAU, Jr.,
Secretary of the Treasury.

Approved:

FRANKLIN D. ROOSEVELT,
The White House.

JANUARY 15, 1934.

GOLD RESERVE ACT OF 1934

(Public, No. 87, 73d Congress, Approved January 30, 1934)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. That the short title of this Act shall be the "Gold Reserve Act of 1934."

SEC. 2. (a) Upon the approval of this Act all right, title, and interest, and every claim of the Federal Reserve Board, of every Federal Reserve Bank, and of every Federal Reserve agent, in and

to any and all gold coin and gold bullion shall pass to and are hereby vested in the United States; * * *

* * * * *

SEC. 3. The Secretary of the Treasury shall, by regulations issued hereunder, with the approval of the President, prescribe the conditions under which gold may be acquired and held, transported, melted or treated, imported, exported, or earmarked: (a) for industrial, professional, and artistic use; (b) by the Federal Reserve banks for the purpose of settling international balances; and, (c) for such other purposes as in his judgment are not inconsistent with the purposes of this Act. Gold in any form may be acquired, transported, melted or treated, imported, exported, or earmarked or held in custody for foreign or domestic account (except on behalf of the United States) only to the extent permitted by, and subject to the conditions prescribed in, or pursuant to, such regulations. * * *

* * * * *

SEC. 5. No gold shall hereafter be coined, and no gold shall hereafter be paid out or delivered by the United States: *Provided, however,* That coinage may continue to be executed by the mints of the United States for foreign countries in accordance with the Act of January 29, 1874 (U. S. C., title 31, sec. 367). All gold coin of the United States shall be withdrawn from circulation, and, together with all other gold owned by the United States, shall be formed into bars of such weights and degrees of fineness as the Secretary of the Treasury may direct.

SEC. 6. Except to the extent permitted in regulations which may be issued hereunder by the Secretary of the Treasury with the approval of the President, no currency of the United States shall be redeemed in gold: *Provided, however,* That gold certificates owned by the Federal Reserve Banks shall be redeemed at such times and in such amounts as, in the judgment of the Secretary of the Treasury, are necessary to maintain the equal purchasing power of every kind of currency of the United States: *And provided further,* that the reserve for United States notes and for Treasury notes of 1890, and the security for gold certificates (including the gold certificates held in the Treasury for credits payable therein) shall be maintained in gold bullion equal to the dollar amounts required by law, and the reserve for Federal Reserve notes shall be maintained in gold certificates, or in credits payable in gold certificates maintained with the Treasurer of the United States under section 16 of the Federal Reserve Act, as heretofore and by this Act amended.

No redemptions in gold shall be made except in gold bullion bearing the stamp of a United States mint or assay office in an amount equivalent at the time of redemption to the currency surrendered for such purpose.

* * * * *

SEC. 12. Paragraph (b) (2), of section 43, title III, of the Act approved May 12, 1933 (Public, Numbered 10, Seventy-third Congress), is amended by adding two new sentences at the end thereof, reading as follows:

"Nor shall the weight of the gold dollar be fixed in any event at more than 60 per

centum of its present weight. The powers of the President specified in this paragraph shall be deemed to be separate, distinct, and continuing powers, and may be exercised by him, from time to time, severally or together, whenever and as the expressed objects of this section in his judgment may require; except that such powers shall expire 2 years after the date of enactment of the Gold Reserve Act of 1934 unless the President shall sooner declare the existing emergency ended, but the President may extend such period for not more than one additional year after such date by proclamation recognizing the continuance of such emergency."

* * * * *

SEC. 13. All actions, regulations, rules, orders, and proclamations heretofore taken, promulgated, made or issued by the President of the United States or the Secretary of the Treasury, under the Act of March 9, 1933, or under section 43 or section 45 of title III of the Act of May 12, 1933, are hereby approved, ratified, and confirmed.

* * * * *

A Proclamation

By the President of the United States of America

* * * * *

Whereas, I find, from my investigation, that, in order to stabilize domestic prices and to protect the foreign commerce against the adverse effect of depreciated foreign currencies, it is necessary to fix the weight of the gold dollar at 15 5/21 grains nine-tenths fine.

Now, therefore, be it known that I, Franklin D. Roosevelt, President of the United States, by

virtue of the authority vested in me by Section 43, Title III, of said Act of May 12, 1933, as amended, and by virtue of all other authority vested in me, do hereby proclaim, order, direct, declare and fix the weight of the gold dollar to be 15 5/21 grains nine-tenths fine, from and after the date and hour of this proclamation. The weight of the silver dollar is not altered or affected in any manner by reason of this proclamation.

This proclamation shall remain in force and effect until and unless repealed or modified by act of Congress or by subsequent proclamation; and notice is hereby given that I reserve the right by virtue of the authority vested in me to alter or modify this proclamation as the interest of the United States may seem to require.

In witness whereof I have hereunto set my hand and have caused the seal of the United States to be affixed.

Done in the City of Washington at 3:10 o'clock in the afternoon, Eastern Standard Time, this 31st day of January, in the year of our Lord one thousand nine hundred and thirty-four, and of the Independence of the United States the one hundred and fifty-eighth.

[SEAL] FRANKLIN D. ROOSEVELT.

By the President:

CORDELL HULL,

Secretary of State.

Approved and effective January 31, 1934.

(5077–C)

U. S. GOVERNMENT PRINTING OFFICE: 1934

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Nos. 471 · 472

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1934.

UNITED STATES OF AMERICA, RECONSTRUCTION FINANCE CORPORATION et al., Petitioners,

v.

BANKERS TRUST COMPANY and WILLIAM H. BIXBY, Trustees.

SUGGESTIONS IN SUPPORT OF APPLICATION FOR WRIT OF CERTIORARI.

EDWARD J. WHITE,
Counsel for Trustees of Missouri Pacific Railroad Company, Debtor.

St. Louis Law Printing Co., 415 North Eighth Street. CEntral 4477.

Nos. .....

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1934.

UNITED STATES OF AMERICA, RECONSTRUCTION FINANCE CORPORATION et al., Petitioners,

v.

BANKERS TRUST COMPANY and WILLIAM H. BIXBY, Trustees.

SUGGESTIONS IN SUPPORT OF APPLICATION FOR WRIT OF CERTIORARI.

Come now L. W. Baldwin and Guy A. Thompson, Trustees of the Missouri Pacific Railroad Company, and respectfully present to the Court that they are Trustees appointed by the United States District Court for the Eastern Division, Eastern Judicial District of Missouri, in the application of the Missouri Pacific Railroad Company, Debtor, for reorganization of its capital structure, being case No.

6935, in which cause the Judge of said court, on March 31, 1933, took jurisdiction of said cause (Tr. of Rec., pp. 5 and 7); and later said Court, in said proceeding, duly appointed said L. W. Baldwin and Guy A. Thompson Trustees of the railroads and property of the said Missouri Pacific Railroad Company, Debtor, which order, appointing Trustees, was entered June 22, 1933, and made permanent upon July 25, 1933 (Tr. of Rec., original page 84, printed 40; original 98, printed 46).

That of the property being administered by said Trustees, the railroad extending from a point adjacent to St. Louis, Missouri, to the City of Memphis, Tennessee, and from Carthage, Missouri, to Newport, Arkansas, is subject to the River and Gulf Divisions First Mortgage of the St. Louis, Iron Mountain & Southern Railway Company, which mortgage contains the so-called "Gold Clause," which is relied upon by the Trustees of said mortgage, the Bankers Trust Company and William H. Bixby, appellants, set up by said Trustees in this cause, who contend that by virtue of the gold clause in said mortgage the entire principal and interest of said mortgage indebtedness, secured by said mortgage, are payable in gold coin of the United States of the weight and fineness obtaining May 1, 1903.

That Trustees herein, in their answer to the intervening petition of said Bankers Trust Company and William H. Bixby, Trustees (Tr. of Rec., original 172, printed 77), have set up that said gold clause of said mortgage is illegal and

void because the said condition of said bonds and mortgage is in violation of the Joint Resolution of the House and Senate of the United States adopted June 5, 1933, providing that promises to pay dollars in gold coin could be satisfied by the payment of dollars in lawful money of the United States, and that said Joint Resolution of the Congress of the United States set aside and rendered nugatory said provision of said "gold clause" provisions of said mortgage and bonds, and, to enforce said provision against the Debtor or the Trustees in this proceeding, would result in increasing the amount due upon the principal and interest of said bonds over the legal amount which the holders of said bonds are entitled to recover.

That upon the hearing upon said petition of said Bankers Trust Company and William H. Bixby, Trustees, and the answers of said Trustees, L. W. Baldwin and Guy A. Thompson, it was shown that if said gold clause of said mortgage and said bonds should be enforced in all the mortgages of said Debtor, the Missouri Pacific Railroad Company, the bonded indebtedness of said company would be increased from a bonded indebtedness in principal amount of $430,000,000.00 to, approximately, $700,000,000.00 against the properties being administered by said Trustees, and that said gold clause in the mortgage of the said St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions, was void, because contrary to said resolution of the Congress of the United States; and said United States District Court for the Eastern Division, East-

ern Judicial District of Missouri, Division No. 1, adjudged that said gold clause was void and in conflict with said resolution of Congress.

That this cause, therefore, involves an issue to said Trustees, L. W. Baldwin and Guy A. Thompson, and to said Debtor, Missouri Pacific Railroad Company, amounting to about $300,000,000.00, and also involves the validity of the Joint and Concurrent Resolution of the Congress of the United States above referred to.

That said cause, therefore, presents a question of the most far-reaching, public importance, as well as an extensive and important issue regarding the assets being administered by said Trustees and the administrative Judge in charge of the bankruptcy proceedings of the Missouri Pacific Railroad Company, Debtor.

Wherefore, said Trustees urge that the application for writ of certiorari, filed on behalf of the United States of America and the Reconstruction Finance Corporation et al. in this cause, should be granted.

Respectfully submitted,

L. W. BALDWIN and
GUY A. THOMPSON,
Trustees, Mo. Pac. R. R. Co.,
Debtor.

By EDWARD J. WHITE,
Counsel for Trustees, Mo. Pac.
R. R. Co., Debtor.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1934

No. 270

NORMAN C. NORMAN,

Petitioner,

VS.

THE BALTIMORE AND OHIO RAILROAD COMPANY,

Respondent.

ON A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK

BRIEF OF PETITIONER

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JEFFREY PRESS, INC.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1934

No. 270

NORMAN C. NORMAN,
Petitioner,

vs.

THE BALTIMORE AND OHIO RAILROAD COMPANY,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK.

BRIEF OF PETITIONER.

Opinion Below.

The opinion of the Court of Appeals (R., 20) is reported in 265 N. Y. 37. The Supreme Court of the State of New York and the Appellate Division thereof did not write any opinions.

Jurisdiction.

The jurisdiction of this court is invoked under Section 237 (b) of the Judicial Code as amended by the Act of February 13, 1925 (28 U. S. C., Sec. 344), since this is a cause wherein a final judgment has been rendered or passed on by the highest court of a state in which a decision would be had where is drawn in question the

validity of a statute of the United States. The date of the judgment of the Court below to be reviewed is July 9, 1934 (R., 19). A writ of certiorari was granted by this Court on October 8, 1934 (R., 24), directed to the Supreme Court of the State of New York, that being the court in possession of the record (*New York* v. *Kleinert*, 268 U. S. 646; *Hodges* v. *Snyder*, 261 U. S. 600).

The Decision of the Court Below.

1. The decision of the Court below, a state court, should be reviewed, because it has decided a federal question of substance not heretofore determined by this Court. This Court has never passed upon the constitutionality or effect of Public Resolution No. 10 of the Seventy-third Congress. It is a federal question of substance which involves the validity of the "gold clauses" contained in billions upon billions of dollars in private obligations.

2. The decision of the Court below should be reviewed because its interpretation of the contract for payment in gold is not in accord with the applicable decisions of this Court. This Court previously held that obligations calling for payment in specie must be discharged by such payment. (*Bronson* v. *Rodes*, 7 Wall. 229; *Trebilcock* v. *Wilson*, 12 Wall. 229.)

3. The decision of the Court below should be reviewed because it decided a federal question of substance, not heretofore passed upon by this Court. This Court has never decided whether payment in legal tender of an amount equivalent to the value of the specie, when payment in specie is impossible to perform, can be required as a discharge of the obligation. This Court in *Butler* v. *Horwitz*, 7 Wall. 258, has intimated that such payment could be required as a discharge of the obligation.

Statement.

On the first day of February, 1930, the petitioner purchased a bond of the Baltimore and Ohio Railroad Company, in the nominal sum of $1,000.00, containing the usual gold clause, that the principal and interest when they matured were payable in gold coin of the United States of America of or equal to the standard of weight and fineness existing on February 1, 1930 (R., 6).

By the terms of the bond the Baltimore and Ohio Railroad Company agreed to pay to the holder interest at the rate of four and one-half percent per annum, payable semi-annually on the first days of February and August of each year, until 1960, when the bond matured. Coupons were attached to the bond for interest payments, which were to be presented and surrendered to the respondent (R., 6).

On February 1, 1934, the petitioner duly presented one of the said coupons, maturing on said date, which called for the payment of the nominal sum of $22.50, payable in gold as above set forth (R., 4). He demanded payment in gold coin, or if such payment were impossible, then payment by legal tender in the equivalent of said gold coin (R., 4). The equivalent would be $38.10, because by the Act of May, 1933, c. 25, Title III, Secs. 43, 48 Stat. 51, as amended by the "Gold Reserve Act of 1934" (see Appendix B), hereinafter referred to as "Gold Reserve Act of 1934," and the proclamation of the President of the United States issued pursuant to it dated January 31, 1934, Proclamation No. 2072-1934 (see Appendix C), the standard gold dollar was fixed to consist of 15 5/21 grains weight, nine-tenths fine, whereas the weight on February 1, 1930, was 25.8 grains, nine-tenths fine (R., 4). Act of March 4, 1900, 31 Stat. 45.

The respondent refused to pay gold coin or its equivalent (R., 4), but offered merely the nominal amount of the coupon, in coin or currency of the United States, other than gold coin and gold certificates (R., 10). This action was therefore begun in the Supreme Court of the State of New York, demanding that the petitioner should be awarded a judgment for the sum of $22.50 in gold coin of the United States of the standard of weight and fineness existing on February 1, 1930, or in the alternative for $38.10, representing the equivalent under the standard of weight and fineness existing on February 1, 1930 (R., 5).

The answer of the Baltimore & Ohio Railroad Company admitted all the allegations of the complaint (R., 9) but set up as an affirmative defense that by Public Resolution No. 10 of the Seventy-third Congress Act of June 5, 1933, c. 48, Sect. 1, 48 Stat. 113, 31 U. S. Code, Sect. 463 (see Appendix A), hereinafter referred to as Public Resolution No. 10, and other acts of Congress and the executive action pursuant thereto, it was prevented and prohibited from fulfilling its contract, and that it was authorized and required to pay only legal tender, dollar for dollar, in the nominal and face amount of the bond and coupon and that it offered to pay same to petitioner. The petitioner, in his reply, admitted that such offer was made, but was refused by him (R., 9).

The petitioner moved to strike out the affirmative defense on the ground that Public Resolution No. 10 was unconstitutional and for judgment on the pleadings (R., 2). Respondent also moved for judgment on the pleadings (R., 11). Petitioner's motion to strike out the affirmative defense was denied on the ground that Public Resolution No. 10 is constitutional and a judgment rendered in favor of petitioner for $22.50, the face amount of the coupon (R., 12). Under the pleadings, plaintiff

was concededly entitled to a judgment in this amount. The judgment, therefore, although nominally in favor of petitioner, was actually in favor of respondent, since for an amount concededly due petitioner under any theory of the case.

The petitioner having felt aggrieved that he did not receive more than the nominal sum of $22.50 appealed to the Appellate Division of the said Supreme Court (R., 1).

That Court affirmed the order and judgment of the lower Court, one justice not participating (R., 14). Petitioner then appealed to the Court of Appeals. The Court of Appeals affirmed the lower Court, one judge dissenting, and two not participating (R., 16). An opinion was written by the Chief Judge (R., 20) upholding Public Resolution No. 10 as constitutional. Judgment was accordingly entered in the Supreme Court of the State of New York on the remittitur of the Court of Appeals (R., 18, 19). This Court granted a writ of certiorari on October 8, 1934 (R., 24).

Specification of Errors.

1. That the Court below erred in denying petitioner's right to demand the payment of gold coin of the United States of the weight and fineness existing on February 1, 1930, or the equivalent thereof under a true construction of the "gold clause" contained in the obligations.

2. The Court below erred in holding that Public Resolution No. 10 of the Seventy-third Congress was constitutional and within the power conferred upon Congress under the United States Constitution and was not a violation of the Tenth Amendment thereof.

3. The Court below erred in holding that Public Resolution No. 10 did not deprive the petitioner of his prop-

erty without due process of law by impairing the obligation of his contract, taking his property for a private purpose and without compensation, denying him the equal protection of the laws, and by the unreasonable exercise of any power Congress might possess with regard to the subject matter.

4. That the Court below erred in affirming the decisions of the said Supreme Court of the State of New York and of the Appellate Division thereof, holding that petitioner was entitled to recover only $22.50 in legal tender, and denying petitioner the right to recover $22.50 in gold coin of the weight and fineness existing on February 1, 1930, or the equivalent thereof in legal tender, and in not holding to the contrary.

Summary of Argument.

PRELIMINARY—Economic and social problems considered.

POINT I—The "Gold Clause" implies a payment by the equivalent in the event performance with gold is impossible.

POINT II—Congress did not possess power to legislate with regard to the subject matter. The power is reserved to the States.

POINT III—Public Resolution No. 10 deprives petitioner of his property without due process of law, and without just compensation by,

(a) impairing the obligation of the contract,

(b) failing to provide just compensation,

(c) a taking which is not for a public use, but for a private purpose,

(d) denying petitioner the equal protection of the laws.

Economic and Social Considerations.

The problem at issue is a grave one indeed for both the Court and counsel. Not only does the decision involve an economic problem of great magnitude, but also constitutional principles of the highest importance. It may not be said that electing sides in this controversy is necessarily a choice of economic or social philosophy. The choice is rather the duty to uphold the constitution. It immediately recalls the admonition of Chief Justice Taft in *Bailey* v. *Drexel Furniture Company*, 259 U. S. 20 (1922):

> "The good sought in unconstitutional legislation is an insidious feature, because it leads citizens and legislators of good purpose to promote it, without thought of the serious breach it will make in the ark of our covenant, or the harm which will come from breaking down recognized standards."

It is hardly necessary to point out that numerous bonds and obligations exist which contain a clause similar to the one involved in this review. In the Congressional debates at the time of the adoption of Public Resolution No. 10, it was variously estimated that there are such obligations to the extent of from ninety to one hundred and twenty-five billion dollars (77 Cong. 4534 ff.; 4905 ff.).

The first thought that therefore occurs to one is that a decision by this Court in favor of the petitioner, granting him the right to receive the equivalent of gold coin, would create bankruptcy, chaos, etc. We will presently show that such alarming view is not justifiable.

First, a glance at any bond exchange bulletin reveals that very few obligations mature at the same time. Most

of them will not mature for decades (see Fitch's *Bond Record*). In fact, the very basis of our entire credit system rests upon the assumption that not all people will demand payment at the same time. Should everyone at the same time venture to obtain, not gold, but paper money from their debtors there would not be enough paper money to pay all obligations.

Furthermore, the debtor may also be a creditor, thereby providing a balance. Thus, a bondholder of a corporation may also be a stockholder in it.

All emphasis, however, should not be placed on the debtor's lot. When the parties arranged the bargain, whereby the considerations passing from one to the other were measured with reference to a standard chosen by them, it is implied by such bargain that the obligation to repay in the future would have a certain value. That value was the bargain. It cannot be said that the creditor is now seeking $1.69 for the dollar agreed upon. To make such an observation is to confuse a function by the designation of a name. The parties did not contract for a dollar in name. They agreed upon a measure of the value of their bargain. Therefore, if the power of the dollar of the nominal sum of $1.69 is equal to that of the dollar of the nominal sum of $1.00, the parties are in parity. The result, therefore, expresses the true intent of the parties to exchange values. To take away from the creditor the right to receive the true value for which he contracted places him in a position which would moderately be called disadvantageous.

It is interesting to note that although the House of Lords in 1933 held that the debtors in similar obligations had to pay the equivalent of the gold (*Feist v. Societe Intercommunale Belge D'Electricite*, 150 Times L. R. 41 [1933], 88 A. L. R. 1524), nevertheless, bankruptcy

and chaos did not follow in its path, despite the fact of common knowledge that there are as many maturities of similar bonds payable in London as there are in the United States. On the contrary, reports indicate a revival of economic life there.

Thus, too, it is interesting to note that immediately after the Civil War in this country, beginning with the decision in *Bronson* v. *Rodes*, 7 Wall. 229, and a long line of cases subsequent to it, this Court required debtors in similar obligations to pay gold or the equivalent at a time when a dollar in paper was worth thirty-six cents in gold, and paper money was scarcely prevalent. Yet, this Court repeatedly affirmed that doctrine without bankrupting the country (Rhodes, *History of the United States*, Vol. 3, p. 563 ff.; do., Vol. 6, p. 258 ff.; David R. Dewey, *Financial History of the United States*, 10th ed., p. 333 ff.; p. 362 ff.).

Then again, a decision in favor of the petitioner may only mean that the president by proclamation may have to revalue the gold unit back to its status under the Act of March 4, 1900, 31 Stat. 45, and where it was until January 31, 1934. The president reserved such power to himself in his proclamation in these words:

> "This proclamation shall remain in full force and effect until and unless repealed or modified by Act of Congress or by subsequent proclamation; and notice is hereby given that I reserve the right by virtue of the authority vested in me to alter or modify this proclamation as the interest of the United States may require."

What may happen as a result of such revaluation one can only guess. A review of recent books and monographs on the subject by capable scholars reveals a disagreement beyond all measure. The closest agreement

seems to be that the monetary policies of the present administration are unwise and that the standard unit of the monetary system should never have been tampered with. The common core of such thought is that the administration attempted to raise price levels and to vie against foreign depreciated currencies by reducing the weight of the standard dollar. The objection is that such a policy is fallacious and leads to great uncertainty in credit.

They also indicate that the better practice would have been to stabilize prices by methods in the credit and economic system, and that the adverse effect of foreign depreciated currency would have been overcome by a flexible tariff, thus permitting a standard and unfluctuating monetary base upon which business credits could be extended with greater certainty and with the confidence so necessary for business stimulation.

For the aid of this Court a short bibliography on the subject is appended (see Appendix D).

Thus, we have demonstrated that the consequences of a favorable decision to the petitioner will not be followed by an economic cataclysm.

It may be urged that public opinion favors Public Resolution No. 10, and, therefore, it is a substitute for the amendment of the constitution. Assuming that public opinion can be discovered (Lowell, *Public Opinion and Popular Government*, Chaps. I-IV), we feel that there is no such feeling in favor of the monetary policies of the government. A reading of the newspapers, periodicals and current books will show an overwhelming rejection of the recent experiments with the currency.

As to the control of public opinion, we can only add the words of T. M. Cooley in his "Constitutional Limitations," pages 68, 69:

> "A principal share of the benefit expected from written constitutions would be lost if the rules they established were so flexible as to bend to circumstances or be modified by public opinion. It is with special reference to the varying moods of public opinion, and with a view to putting the fundamentals of government beyond their control, that these instruments are framed; and there can be no such steady and imperceptible change in their rules as inheres in the principles of the common law. Those beneficent maxims of the common law which guard person and property have grown and expanded until they mean vastly more to us than they did to our ancestors * * * and we may confidently look forward in the future to still further modifications in the direction of improvement. Public sentiment and action effect such changes, and the courts recognize them: but a court or legislature which should allow a change in public sentiment to influence it in giving to a written constitution a construction not warranted by the intention of its founders, would be justly chargeable with reckless disregard of official oath and public duty."

See also

Hurtado v. *California*, 110 U. S. 516, 530.

Mr. Justice Cardozo once put it thus:

> "Historic liberties and privileges are not to bend from day to day 'because of some accident of immediate overwhelming interest which appeals to the feelings and distorts the judgment' (Holmes, J., in Northern Securities Co. v. United States, 193 U. S. 197, 400) are not to change their form and

> content in response to the 'hydraulic pressure' (Holmes, J., supra) exerted by great causes." *Doyle* v. *Hofstadter*, 257 N. Y. 244, 268.

Mr. Justice Holmes also made the following statement:

> "A strong desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way."
>
> *Pennsylvania Coal Co.* v. *Mahon*, 260 U. S. 393, 416.

Dean Roscoe Pound contributed the following observation:

> "The idea with which we meet sometimes that courts should administer the will of the people for the time being in each case, is as unlegal and opposed to justice as the corresponding seventeenth century notion that in every case they ought to administer the will of the king for the time being." (Justice According to Law, 13 *Columbia Law Review* 696, 703.)

We took this occasion to dwell on the subject of public sentiment, because these are distressing times. Voices call from all directions urging now this course, now that course. The previous great monetary issue was decided in the case of *Knox* v. *Lee*, 12 Wall. 457 (1870). It is a matter of history what a great stir was created by that issue, and how the Court had reversed its own decision in *Hepburn* v. *Griswold*, 8 Wall. 603 (1869). Sachs, *Stare Decisis and the Legal Tender Cases*, 20 *Virginia Law Review* 856; Rhodes, op. cit., Vol. 3, p. 563; Vol. 6, p. 258.

POINT I.

The gold clause implies a payment in the equivalent of gold in the event performance with gold coin is impossible.

Before the Civil War two kinds of money existed, and contracts were dischargeable by the payment of either gold or silver. This existed until the passage of the Legal Tender Act around 1862.

Bronson v. *Rodes*, 7 Wall. 229 (1868).

During that period creditors possessing paper currency were in a bad plight. A dollar in paper was worth about thirty cents in relation to the dollar in gold. To guard against such a recurrence and against the free silver agitation of the 1890s, gold clauses similar to the one in issue were adopted. Consideration for the existence of such clause must be presumed. It is also a matter of common knowledge that bonds containing a gold clause were sold at a smaller interest rate than those without it.

> 77 *Cong. Record*, p. 4534. *Annals of the American Academy of Political and Social Science*, Vol. 165, p. 220.

Gold clauses were used for the very purpose of guarding against a depreciated currency. It is difficult for one to see what other intention could have existed in the minds of the parties in providing a special mode of payment.

In the case of *Bronson* v. *Rodes*, supra, and in a long line of cases following it, both before and after the decision in the Legal Tender Cases, *Knox* v. *Lee* (1871)

12 Wall. 457, this Court held that when the parties provided a special mode of payment in metallic currency, they were providing the holder of the obligation with a safeguard against a depreciated paper currency. *Butler* v. *Horwitz* (1868) 7 Wall. 258, 260; *Willard* v. *Taylor*, 8 Wall. 557 (1869); *Dewing* v. *Sears*, 11 Wall. 379; *Trebilcock* v. *Wilson*, 12 Wall. 687 (1872); *The Vaughan & Telegraph*, 14 Wall. 258; *Thompson* v. *Butler*, 95 U. S. 694; *The Emily Souder*, 17 Wall. 666; *Gregory* v. *Morris*, 96 U. S. 619; *Maryland* v. *Baltimore & Ohio Railroad Co.*, 22 Wall. 105; *Woodruff* v. *Mississippi*, 162 U. S. 291.

In the first case, *Bronson* v. *Rodes*, supra, the situation was as follows: In 1851, an owner of a parcel of property borrowed $1,400, secured by a mortgage on the parcel, payable in 1857 in gold and silver coin, lawful money of the United States. The property was conveyed to Rodes, who assumed to pay the debt. In January, 1865, Rodes tendered to Bronson legal tender in the form of United States notes in the sum of $1,507. The latter sum was equal in the nominal amount to the principal and interest due on the bond and mortgage. At that time, one dollar in coin was equal to $2.25 in United States notes. Bronson refused the tender, insisting upon payment in gold or silver. Thereupon, Rodes sued in equity to compel the discharge of the mortgage. The New York Court of Appeals had held that the tender of notes by Bronson entitled him to a discharge of his obligation.

This court, however, reversed the decision, and held that not only was the provision for payment in coin a lawful contract, but that the obligee could compel its payment, despite the fact that between the making of the loan in 1851 and the tender in 1865, legal tender had been made lawful for payment of all private debts. The Court, amongst other things, said:

> "We cannot suppose that it was intended by the provisions of the currency acts to enforce satisfaction of either contract by the tender of depreciated currency of any description equivalent only in nominal amount to the real value of the bullion or the coined dollars. Our conclusion therefore upon this part of the case is that the bond under consideration was in legal import precisely what it was in the understanding of the parties, a valid obligation to be satisfied by a tender of actual payment according to its terms, and not by an offer of mere nominal payment. Its intent was that the debtor should deliver to the creditor a certain weight of gold and silver of certain fineness, ascertainable by count of coins made legal tender by statute: and this intent was lawful."

The respondent, however, asserts that although the parties intended that performance in terms of the gold clause, it is impossible for it to pay its obligation, because by the Act of October 6th, 1917, Sect. 5, 40 Stat. 415, as amended by the Act of March 9, 1933, c. 1, Sect. 2, 48 Stat. 1 (U. S. Code, Title 12, Sect. 95a, the "Gold Reserve Act of 1934" (Appendix B), the proclamations, and orders pursuant thereto, *all* gold has been withdrawn from circulation, coinage of gold has been discontinued, and all persons have been forbidden to possess it. In other words, there is no gold with which it can discharge its obligation.

Bearing in mind that the petitioner does not seek the gold coin itself, but primarily asks for its equivalent, several alternatives present themselves:

> (1) Since the parties agreed that payment should be made in gold coin and since it is

impossible to perform, no payments at all should be made by the respondent.

(2) The respondent should pay only the nominal amount in dollars of legal tender.

(3) The petitioner should pay the equivalent of the value of gold coin in dollars of lawful money.

In the first situation, it cannot be insisted that the respondent should be relieved from its obligation. The petitioner performed his side of the bargain by lending his money. The respondent promised to return it. The fact that the measure of the value of the dollar is not in circulation is no ground for excusing performance *in toto*. The respondent measured the value of the dollar by stating its bond in terms of the weight and fineness of the gold unit. The *measure* exists, although the *medium* of exchange has been abolished.

The parties intended that the respondent would perform in all events, save bankruptcy. The gold clause was placed in the obligation in order that it may be a more desirable obligation than those dischargeable by payment in ordinary dollars. If payment could have been provided for in ordinary dollars and such dollars now exist for payment, surely, it cannot be asserted that one possessing an obligation requiring performance in special dollars is in a worse position. If gold never returned as a medium of exchange, it would mean that holders of obligations which were performed on their part could never obtain performance from the obligor, even in ordinary dollars.

That this result was never intended by the parties is so patent that it requires very little argument to refute the contention (which the court made in the case of *In re Missouri Pacific Railroad Co.* (7 Fed. Supp. 1), that

because the *medium* of exchange is abolished and its possession made illegal, the *obligation* to pay the indebtedness therefore becomes illegal.

If one bears in mind that a unit dollar is not only a medium of exchange, but also a *measure* of value, then most difficulties will be alleviated.

Then again, it is a principle of the common law that when impossibility of performance exists as to only a part of the contract, the part that can be performed must be performed.

> *Williston, On Contracts*, Vol. 3, p. 3323, Sect. 1956; also p. 3293, Sect. 1938.

Thus, in *New York Central R. R. Co.* v. *Gray*, 239 U. S. 583, a person performed services for value for the railroad company. In consideration of his labor he received a pass for train passage. Thereafter, by law, passes were forbidden. This Court, distinguishing the case of *Louisville & Nashville R. R.* v. *Mottley*, 219 U. S. 467 (of which a good deal will be mentioned later), held that he could receive payment in dollars to discharge the obligation originally payable by a railroad pass. The railroad could not obtain the benefit of his labor, the value of which was easily measurable in terms of dollars, and then refuse performance just because the commodity with which it was to pay was outlawed. That case is one in which a barter was involved. The measures of value could not be ascertained merely by computation. Yet this Court allowed a recovery payable in a manner that was possible. The case at issue is a much stronger case, because it does not involve barter (a commodity exchange), but is one where the values were based on a fixed unit, and such values could easily be discovered by simple computation.

In the second alternative, it was indicated above that the long line of cases beginning with *Bronson* v. *Rodes* have asserted that the gold clause would be meaningless if a depreciated paper currency were sufficient to discharge the obligation in the nominal sum. See, especially, *Butler* v. *Horwitz*, *Trebilcock* v. *Wilson*, supra.

The third alternative requires the respondent to pay the equivalent of the value of the gold coin. It is this phase of the problem which vitally bears on petitioner's demand.

Gold can either be considered as a commodity or as a *unit for the measurement* of values. In the earlier cases of *Bronson* v. *Rodes* and *Butler* v. *Horwitz*, supra, this court implies that the gold clause was an agreement to deliver gold as a commodity. In the later cases, notably, *Trebilcock* v. *Wilson*, and *Thompson* v. *Butler*, supra, the position is changed, and the clause is deemed to require payment in money, but measured in the value of gold. The Court of Appeals also adopted the latter (R., 21). It should be noted that prior to the enactment of the "Gold Reserve Act of 1934" gold coins were interchangeable with bullion by law. U. S. Code, Title 31, Sects. 326, 327.

This Court in the above line of cases did not concern itself with the difference, because the result would have been the same in any theory. We here also contend that it does not matter whether the clause is regarded as a commodity contract or one of money, the result will follow in either case, viz., that the petitioner is entitled to receive the equivalent of the value of the gold coin. If it is regarded as a commodity contract, then the situation is similar to the case of *New York Central R. R. Co.* v. *Gray*, supra, where this Court held that the value of the commodity should be paid. See also, *Ortega* v. *Triay*, 260 U. S. 110. The value here could

be only what the parties agreed upon, that is, gold coin of the weight and fineness existing on February 1, 1930 (R., 6).

If the obligation be deemed a money contract then the intent of the parties indicates that the gold equivalent must be decreed. In the case of *Bronson* v. *Rodes* and the others following it, the intent of the parties was considered paramount. That intention was held to be an arrangement to safeguard the holder of the obligation against depreciated currency. That intention does not mean that gold coins actually must be delivered to the holder as the only means of discharge, if the holder elects to take something else in the equivalent. Thus, before our present financial arrangements, most transactions were purely credit transactions of bookkeeping entry and balance. A person with a gold bond would simply deposit his interest coupon in a bank and receive credit for it. Gold never entered into the transaction.

So, too, this court in *Butler* v. *Horwitz* and *Gregory* v. *Morris*, supra, held that if the holder of the obligation insisted upon the equivalent of gold, he was entitled to a judgment in those terms.

A further aid to the ascertainment of that intent can be found thus: the bond in this case is for the face amount of $1,000.00 with interest at four and one-half percent per annum, payable semi-annually in gold coin. The interest therefore is $22.50 arranged with convenient coupons for that amount. In 1930 when the obligation was created, gold coins existed in denominations of $20.00 and $2.50 (the coinage of the latter ceased in 1929, but it can be assumed that they were still in circulation). It so happens that this bond is in a round, even figure. But suppose, please, that the bond were for $1,001.00 or the interest were payable at four and one-fourth percent per annum, then the amount payable

would be an odd sum for which no denomination in gold coin exists. Payment with gold coin therefore could not be fulfilled.

In the case of the *Serbian Loans, Publications of the Permanent Court of International Justice*, Ser. A, No. 21 (1929) the following was said:

> "These were to be gold payments, but there were no gold coins for such amounts. It is manifest that the parties in providing for gold payments, were referring, not to payment in gold coins, but to gold as a standard of value. It would be in this way, naturally, that they would seek to avoid, as was admittedly their intention, the consequences of a fluctuation of the Serbian dinar."

Also in the case of the *Brazilian Loans, Publications of the Permanent Court of International Justice*, Sect. A, No. 20 (1929) the following was observed:

> "The economic dislocation caused by the Great War has not, in legal principle, released the Brazilian Government from its obligations. As for gold payments, there is no impossibility because of inability to obtain gold coins, if the promise be regarded as one for the payment of gold value. The equivalent in gold is obtainable.

The conclusion follows that the parties really never had in mind the actual delivery of the gold coin, but only the coin as a *measure* of value.

Recently, the House of Lords in England upheld a similar contention in a similar case. (*Feist* v. *Société Intercommunale Belge D'Electricité*, 150 Law Times Rep. 41 [1933], [88 L. R. A. 1524]). In that case a bond was issued in 1928 for the nominal sum of 500 pounds ster-

ling, principal and interest payable in gold coin of the standard weight and fineness existing on February 1, 1928. It was held that the intention of the parties was that satisfaction of the debt was not to be by gold coins, but by the value of the gold as the measure of the obligation.

In anticipation any argument that may be presented that by considering the gold clause as a *measure* of value the bond is rendered non-negotiable contrary to the intent of the parties. (Negotiable Instruments Law, Sect. 20, sub. 2), it is respectfully submitted that by the New York Negotiable Instruments Law, Sect. 25, sub. 5, provision is specifically made that the negotiability of an instrument is not affected by the fact that it designates a particular kind of currency in which payment is to be made.

In the case of *Chrysler* v. *Renois* (1870) 43 N. Y. 209, at common law, the New York Court of Appeals held that a bill of exchange payable in "gold dollars" is negotiable, wherein *Bronson* v. *Rodes* and *Butler* v. *Horwitz*, supra, were cited (pp. 214, 215).

POINT II.

Public Resolution No. 10 was enacted beyond the powers of Congress.

Having given a true construction to the terms of the bonds, we now turn to the effect of Public Resolution No. 10 upon it. That law declares that the existence of a gold clause in both public and *private* obligations to be against public policy. It also declares that any such obligations, *past* or future, shall be payable in lawful money of the United States, dollar for dollar, in the nominal sum of the bond.

Our first investigation leads us to analyze the powers of Congress to act with regard to such circumstances. It cannot be asserted that some inherent power exists in the federal government to make such laws, for it is well settled that the federal government is one of granted and enumerated powers. *Kansas* v. *Colorado*, 206 U. S. 46. Nor can it be asserted that the preamble to the Constitution enlarges or confers powers. *Yazoo Railroad Company* v. *Thomas*, 132 U. S. 174, 188; *Jacobson* v. *Massachusetts*, 197 U. S. 11, 22.

Examining the express powers granted to Congress by the Constitution, Article I, Sect. 8, the following seem related to the question.

(1) The Congress shall have power to levy and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States, but all duties, imposts and excises shall be uniform throughout the United States.

(2) To borrow money on the credit of the United States.

(3) To regulate commerce with foreign nations, and among the several states, and with the Indian tribes.

(4) To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States.

(5) To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures.

(18) To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

In none of the above express powers is anything found granting to Congress power to state that an obligation to pay in certain terms shall no longer be effective in those terms. The next possibility that may be presented is that the power to enact Public Resolution No. 10 is an implied and combined power, of the kind Chief Justice Marshall had in mind in *McCullough* v. *Maryland,* 4 Wheat. 316, 421, with the formula that if the object of the law is within constitutional powers, then any means that is *plainly adapted* to such end is a lawful implied power. These are his words:

> "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional."

Our next attack is to indicate that the means sought to be used by Congress are not plainly adapted to the end, but that the legislation is a patent guise of the type discredited by this Court.

The objects of the law are thus stated in the declaration of policy preceding the text of the law itself.

> "Whereas the holding of or dealing in gold affect the public interest and are, therefore, subject to proper regulation and restriction, and
>
> Whereas the existing emergency has disclosed that provisions of obligations which purport to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby, obstruct the power of the Congress to regulate the value of the money of the United States, and are in-

> consistent with the declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States in the markets and in the payment of debts."

Thus, the declared objects appear to be:

(1) To eliminate any obstruction to the power of Congress to regulate the value of the money of the United States;

(2) to eliminate any interference with the declared policy of Congress to maintain at all times the equal power of every dollar, coined or issued by the United States.

While ordinarily a legislative declaration of policy is entitled to great respect and weight (*Block* v. *Hirsch*, 256 U. S. 170), nevertheless, when one considers the history of this legislation and the growing tendency of legislatures to make such declarations whenever they are in doubt regarding the constitutionality of the law, the declaration must be examined with great caution.

In *Chastleton* v. *Sinclair*, 264 U. S. 543, 547, this Court stated:

> "We respect what was stated in Block v. Hirsch, 256 U. S. 135, 154, as to the respect due to a declaration of this kind by the legislature so far as it relates to present facts. But even as to them a court is not at liberty to shut its eyes to an obvious mistake, when the validity of the law depends upon the truth of what is declared. *Charles Wolff Packing Co.* v. *Court of Industrial Relations*, 264 U. S. 522, 536. And still more obviously so far as this declaration looks to the future it can be no more than a prophecy and is liable to be controlled by events."

Also in *Bunting* v. *Oregon*, 243 U. S. 426, this Court said:

> "It is, however, urged that we are bound by the declaration of the law or decision of the court. In other words, and to use counsel's language, 'the legislative declaration of necessity, even if the act followed such declaration, is not binding upon this court. *Coppage* v. *Kansas*, 236 U. S. 1. Of course, mere declaration cannot give character to a law nor turn illegal into legal operation, and when such attempt is palpable this court necessarily has the power of review."

This Court is not concerned with the wisdom of the act and with other non-justifiable questions. But in considering whether the means are plainly adapted to the end, the Court will necessarily inquire whether the facts are true.

The history of this legislation unfolded itself in the midst of other frantic measures to solve economic problems. This legislation was born in the attempts to raise prices to a 1926 level; and to erect a barrier against the influx of goods from countries with a depreciated currency (77 Cong. Record 2229, ff., 77 Cong. Record, 4526 ff.; 77 Cong. Record, 4889 ff.: Report No. 169, House of Representatives, Seventy-third Congress).

In placing a construction upon a Congressional act great weight is given to the reports of committees and to statements made on the floors of Congress (*Duplex Company* v. *Deering*, 254 U. S. 443, 474). An examination of the *Record* reveals that to accomplish the foregoing purposes it was deemed wise to sooner or later cut the gold content of the standard unit of value, the dollar, and still call it by the same name. By raising and lowering that content it was thought that magic

results would follow. Whether the results have been obtained is beside the point. But the object was to secure ease in raising and lowering the gold content. The main object in trying to raise the prices level was to relieve debtors from the increased burden of debt, resulting from the increased purchasing power of the dollar. Ergo, a lowered content of the gold unit would depreciate the value of the dollar, and thereby make the obligations of debtors closer to a level at which they were contracted (as if they were all contracted at the same time or at a 1926 level). Something, however, proved inconvenient, if not embarrassing, to this plan. That something was the gold clause contained in billions upon billions of dollars in obligations. If the gold content of the standard unit were decreased to relieve debtors, it meant that the decrease would also burden debtors obligated to pay according to a special gold content (or its equivalent).

Congress sought to resolve this dilemma by nullifying the gold obligation in contracts, and by declaring such obligations to be against public policy. This declaration of a new public policy was contradictory to the fact that this Court, beginning with *Bronson* v. *Rodes*, supra, declared such clauses to be valid, and after billions upon billions (shall it be said one hundred billions) of dollars of similar obligations had been created in reliance upon the decisions of this Court.

Congress took this step, to make every *nominal* dollar have the same power (see preamble to Public Resolution No. 10, "To maintain at all times the equal power of every dollar, coined or issued by the United States in the markets and in the payment of debts"). This step was taken despite the pronouncement of this Court in *Bronson* v. *Rodes*, supra, that obligations with gold clauses were created for the very purpose of guarding against depreciation of the currency, and that the holder of the obliga-

tion should receive the special treatment arranged by the parties.

From where did Congress derive this exercise of power? Is it from an implied money power or bankruptcy power? The consideration of these powers follows:

Subdivision 5 of Article I, Section 8, reads:

> "To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard Weights and Measures."

No comments are to be found in the debates in the Federal Convention to form the Constitution which will be of assistance in interpreting this clause. Farrand, *Records of the Federal Convention of 1787*, Vol. 2, pp. 136, 143, 144, 159, 167, 182, 304, 308, 569, 595, 655; Elliot, *Debates on the Federal Constitution*, Vol. 5, pp. 130, 378, 434, 560; Bancroft, *History of the Formation of the Constitution of the United States;* Warren, *The Making of the Constitution.*

Since the grant of this power is so particularized, no serious dispute can arise if the plain meaning of the words are accepted. "To coin" means to strike an impression on a piece of metal. Thus, a medal is coined. To coin money is to give the impression a governmental authority (Webster's *International Dictionary*). "To regulate the value thereof" would mean to state the character of that coin in terms of its exchange value and to give it a content of a nominal amount. See also Holmes, J., in *Kent's Commentaries* (12 ed.), Vol. 1, p. 254.

That "to regulate the value of money" means that Congress can increase or lower the content of the unit according to a certain price level, or any other norm it chooses, we readily concede. But the point of our

contention is that to regulate the value of money does not imply that every obligation payable in money is susceptible of regulation by Congress.

In the case of *Fox* v. *Ohio*, 5 How. 410, the defendant was indicted and convicted under the laws of Ohio, forbidding the passing of counterfeit money. He objected to the validity of the statute, asserting that the power of Congress to coin money and to regulate the value thereof included the power of Congress to exclusively prohibit the passing of the bad money in transactions. This Court, however, denied that contention, and indicated the difference between laws against counterfeiting, i. e., the *manufacture* of false money and laws directed against *transactions*, in which such money is used. This Court distinctly denied that the money powers of Congress included the right to control *private transactions* within the states in the following words (p. 433):

> "We think the language of the constitution, by its proper signification, is limited to the facts, or to the faculty in Congress of coining and of stamping the standard of value upon what the government creates or shall adopt, and of punishing the offence of producing a false representation of what may have been so created or adopted." (p. 434) "It would follow from these views, that if within the power conferred by the clauses of the constitution, above quoted can be drawn the power to punish a private cheat effected by means of a base dollar, that power certainly cannot be deduced from either the common sense or the adjudicated meaning of the language used in the constitution, or from any apparent or probable conflict which might arise between the federal and State authorities, operating each upon these distinct characters of offence."

It is thus seen that this Court previously limited the meaning of the phrase to its common meaning. What is more important for the purposes of this case—this Court there inferred that the money clause can have no reference to a direct control over a private transaction.

When the money powers were lodged in the federal government the obvious purpose was to create an authority that would establish a uniform standard, whereby transactions could be stated with reference to this uniform measure of exchange, and whereby obligations could be discharged with a uniform *medium* of exchange, having some relation to the uniform *measure* of exchange. The same idea of a uniform measure is patent in the same clause of subdivision 5, where Congress is granted power "to fix the Standard of Weights and Measures." Without a measure of exchange in terms of money, or a medium of exchange in like terms, the alternative would be a system of barter, which would be clumsy and varying.

In other words, money is merely an assistance to economic transactions. Without it, transactions would take place just the same, and obligations would be incurred.

There is no power in Congress to directly enlarge or diminish an obligation. Such powers belong to the States, if they exist at all. Congress, as we indicated, desired to tamper with the content of the gold unit. Therefore, it said that all gold obligations no longer existed according to their tenor. In other words, Congress found it *inadvisable* to lower the content of the dollar, because there were too many obligations with the gold clause outstanding. Therefore, for greater convenience, the obligations had to cease existing. If only one million dollars worth of such obligations existed, the inconvenience to the lowering of the content of the dollar would not have been deemed substantial. It would then

have followed that such obligations could exist, and therefore they were not part of the money power of Congress. Ergo, the relation of the obligation to the money powers of Congress depended upon the degree to which its power to increase or diminish the gold content was inconvenienced.

These gold obligations were no part of the monetary system. They were economic transactions in a price system. The money unit and medium were mere incidents of the transaction. Therefore, the transaction should not be obliterated in order that the unit might be tampered with.

It might be said that people by contracts payable in gold or in the equivalent would control the value of the currency, i. e., prevent a raising or lowering of the content. That thought is refuted by the argument that persons making such obligations do so in order to fix a more accurate *measure* of the value of their exchange.

Thus, the fact that gold is chosen as the standard unit of value is chiefly based on tradition (Keynes, *A Treatise on Money*, Vol. 2, p. 289; Withers, *The Meaning of Money*, 2 ed., pp. 9-22). The parties could use any other unit. If gold could not be chosen, then it would be silver, or copper, or wheat. The use of any standard as the measure of the intent of the parties does not, however, by "prophetic discernment" hinder the monetary functions of the government. Surely, if the value of wheat is used as the standard of measure, the power to regulate money would not be affected. It follows, therefore, that if parties receive an equivalent of any measure in paper money or credits, whether that measure be gold or wheat, the currency is not affected. The bargain is merely performed according to the intent of the parties. Congress indicated so much by providing in Public Resolution No. 10 that all gold clause obligations

should be paid "dollar for dollar" in lawful currency (paper money and coins other than gold). If payment in paper currency can be made for the nominal amount of the obligation without affecting the power over money, the inference is that payment in paper currency for a sum in addition to the mere nominal amount would have no effect upon the power to regulate.

For a clear understanding of the problem, the true significance of the transaction of the parties must be observed. If in 1926 a gold obligation was incurred, the situation from a formal point of view was as follows: Mr. Jones needed money badly. Mr. Smith, the banker, was willing to lend it to him. But Mr. Smith, an old man in experience, knew of the fluctuations of money in different crises. He did not feel that calling a thing a dollar meant that it was a dollar in value. He would not be fooled by names. He therefore said to Mr. Jones, "I'll lend you $1,000.00 in so much exchange value today, in consideration of your agreement to return to me the same exchange value when the obligation matures. We can provide to measure that exchange value by the value of your Rembrandts today, and by its value at the maturity of the obligation. But since your Rembrandts are so rare as to have a wide and fluctuating diversity of value, we will be hampered by choosing such measure of the value. It would be better to use something that has been used so often and has a more stable and more fixed market value; especially is this true, because the government has fixed the value of this unit and we can designate its value as of today's date. Let's choose the gold unit."

That is all the transaction means. The nominal dollar of 1926 is equivalent to a *nominal* sum of $1.69 in 1934. But the *actual* values, the true and realistic bargain of the parties, are equal. To argue therefore that the obliga-

tion should be scaled to a level of 1926 overlooks the fact that the parties (as in *Bronson* v. *Rodes*, etc.) had in mind, as their respective considerations, not nominal sums, but certain levels of exchange value. Any other interpretation would compel the creditor to accept something for which the parties did not exchange considerations.

It may be that the prohibition of the exportation of *coin* as in *Ling Su Fan* v. *United States*, 218 U. S. 312, may affect the currency system internally. But where the *equivalent* of the gold coin (acting as a unit of measurement) is sought there is no such fair relation to the monetary powers that Congress can confiscate such equivalent.

The Legal Tender Cases Distinguished.

Since counsel for the respondent in the courts below relied greatly upon the decision of this Court in The Legal Tender Cases, *Knox* v. *Lee*, 12 Wall. 457 (1870), that case should receive conspicuous attention. That case squarely reversed this Court's previous decision in *Hepburn* v. *Griswold*, 8 Wall. 603 (1869).

For an interesting history of the cases, consult Warren, *The Supreme Court in United States History*, Vol. 3, Chap. 31.

The facts and the issues are clearly distinguishable from this case. Without considering the principles involved, but merely citing precedent, one readily submits the case of *Trebilcock* v. *Wilson*, supra, as having made the distinction definite.

Turning now to a consideration of the facts and principles there considered, one finds that the issue was as follows: An obligation had been incurred prior to

the enactment of the Legal Tender Acts. The obligation was stated not in dollars measured in a specific manner. It merely provided for payment in nominal dollars. The question therefore was could acceptance of such paper dollars be compelled as a discharge of the obligation calling for payment in nominal dollars. This Court held by a five to four decision that *such* obligations could be discharged in that manner.

The Legal Tender Acts provided a paper money currency. Prior to their enactment the only currency in circulation was coins. In providing a paper currency, Congress impressed the paper with governmental authority, specified the denomination, and authorized that paper to have the power to discharge obligations. This Court held that Congress acted within the legitimate grant of constitutional power. That conclusion has been criticized as being beyond the intent of the framers of the Constitution (Tucker, *Constitution of the United States*, Vol. 1, 508 ff.; Tiedemann, *The Unwritten Constitution of the United States*, 135, 136; Hepburn, *History of Coinage and Currency in the United States*, p. 259).

But regardless of what criticism may be made of the Legal Tender Cases, the decision is inapplicable to this one. This Court there held that the paper had the characteristics of money and that acceptance of it could be compelled as payment of an obligation. In providing that power, the compulsion was directed at the mode of *payment*; nothing was said or done regarding the extent of the *obligation* of the contract. Furthermore, this Court distinguished the situation there involved of an obligation payable simply in *dollars* from one payable in gold coin. Said this Court (p. 548):

> "It is true that under the acts, a debtor, who became such before they were passed, may discharge his debt with the notes authorized by them,

> and the creditor is compellable to receive such notes in discharge of his claim. But whether the obligation of the contract is thereby weakened can be determined only after considering what was the contract obligation. It was not a duty to pay gold or silver, or the kind of money recognized by law at the time when the contract was made, nor was it a duty to pay money of equal intrinsic value in the market. (We speak now of contracts to pay money generally, not contracts to pay some specifically defined money.)"

The obligation of the gold clause, we have demonstrated, is not the nominal face amount, but the equivalent of the gold coin. Therefore, when legal tender is endowed with power to pay an obligation, the measure of the obligation to be paid with such legal tender is the equivalent of the gold coin. If such reasoning is followed, no violence is done to the power of legal tender to discharge an obligation in dollars, nor will the *measure* of the obligation be affected.

The decision of this Court in *Trebilcock* v. *Wilson*, 12 Wall. 687 (1871), bears out the contention that the Legal Tender Cases, decided the year previously, did not affect this Court's decision in *Bronson* v. *Rodes*, supra, nor did the Legal Tender Acts endow paper currency with a power to discharge gold obligations by payment of the nominal amount (see also *Gregory* v. *Morris*, 96 U. S. 619).

In the *Trebilcock* case one Wilson gave Trebilcock his note in 1861 for the face amount of $900.00 payable in specie, and secured by a mortgage. In 1863 Wilson tendered the nominal face amount of $900.00 to Trebilcock in legal tender. The tender was refused on the ground that the note called for payment in specie. Wilson

thereupon brought an action to have mortgage discharged and cancelled. This Court following *Bronson* v. *Rodes*, supra, held (in 1871) that the tender was insufficient, because the words "in specie" had a different meaning from the words "in currency," and therefore the obligation was greater than one calling merely for payment in dollars current in the community.

The conclusion therefore as decided by the Legal Tender Cases is that Congress had the power to grant certain characteristics to paper and to compel its acceptance in payment of obligations. But those cases did not decide that by the power to compel acceptance of paper currency in discharge of an obligation implied a power to diminish an obligation that was measured in a special way. On the contrary, this Court repeatedly implied that the power did not exist.

It is therefore obvious that Congress attempted to exercise a power it did not possess. To obtain such power the money powers of the Constitution were conveniently chosen. This Court in the past had occasion to pass upon legislation that found no constitutional approval, but which purported to be disguised in another power.

Thus in *Mugler* v. *Kansas*, 123 U. S. 623, 661, this Court had occasion to say:

> "The Courts are not bound by mere forms, nor are they misled by mere pretences. They are at liberty—indeed, are under a solemn duty—to look at the substance of things, whenever they enter upon the inquiry whether the legislature had transcended the limits of its authority. If, therefore, a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial rela-

> tion to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so *adjudge*, and thereby give effect to the constitution."

Chief Justice Marshall also said (*McCullough* v. *Maryland*, 4 Wheat. 316, 423):

> "Should Congress under the pretext of executing its powers, pass laws for the accomplishment of objects not intrusted to the government, it would become the painful duty of this tribunal, should a case requiring such decision come before it, to say that such an act was not the law of the land."

In the previous attempts to attach a power to a purported power this Court cautiously disapproved such trespasses. Outstanding examples follow:

(a) *Commerce.*

In the commerce power lies the most fruitful field for discernment. Here the leading case is *Hammer* v. *Dagenhart*, 247 U. S. 251. In that case Congress attempted to regulate child labor within the States by prohibiting the transportation in interstate commerce, of products of certain specified industries produced by children of certain ages within thirty days prior to their removal. It was there held that while the regulation of child labor was a desirable objective, the power to do so rested in the States, and not in Congress. That the power to regulate commerce included the right to bar the use of interstate transportation where the facilities would aid the accomplishment of an evil. Said the Court:

> "But it is insisted that adjudged cases in this Court establish the doctrine that the power to

regulate given to Congress incidentally includes the authority to prohibit the movement of ordinary commodities, and therefore that the subject is not open for discussion. The cases demonstrate the contrary. They rest upon the character of the particular subjects dealt with and the fact that the scope of governmental authority, state or national, possessed over them is such that the authority to prohibit is as to them but the exertion of the power to regulate." * * * "In each of these instances the use of interstate transportation was *necessary to the accomplishment of harmful results*. In other words, although the power over interstate transportation was to regulate, that could only be accomplished by prohibiting the use of the facilities of interstate commerce to effect the evil intended" * * *

"Many causes may co-operate to give one State, by reason of local laws or conditions, an economic advantage over others. The Commerce Clause was not intended to give to Congress a general authority to equalize such conditions."

We asserted above that the use of gold as a measure of value is not an evil. Any object could be used as such a measure. Yet no one can insist that a contract calling for a payment measured by the value of any commodity is subject to action by Congress. This we submit is of greater moment when one considers that under the "Gold Reserve Act of 1934," the coining of gold has been withdrawn and gold as a circulating medium of exchange has been abolished. Now, it is only a base for values. It is now the same as the standard weights and measures kept in seclusion in Washington. Could anyone assert that Congress could pass a law under its power to regulate weights and measures, stating that a contract

for the delivery of a bushel of wheat could be discharged by the delivery of only half of a bushel?

In *Kidd* v. *Pearson* (1888), 128 U. S. 1, a suggestion was made that Congress might control industries through the commerce power. It was said in reply:

> "If it be held that the term includes regulation of all such manufacturers as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that Congress would be invested to the exclusion of the States, with the power to regulate, not only manufacturers, but also agriculture, horticulture, stock raising, domestic fisheries, mining—in short, every branch of human industry."

In *United States* v. *Chicago, etc., R. R. Co.*, 282 U. S. 311 (1930), the Court disapproved the attempts of the Interstate Commerce Commission to control the reorganization fees of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company on the ground that it was an interference with contract and property rights which were outside the power of Congress. There it was said (p. 327):

> "The power to regulate commerce is not absolute, but is subject to the limitations and guarantees of the Constitution, among which are those providing that private property shall not be taken for public use without just compensation and that no person shall be deprived of life, liberty or property without due process of law. Monongahela Navigation Co. v. United States, 148 U. S. 312, 336; United States v. Joint Traffic Association, 171 U. S. 505, 571-572; Adair v. United States,

208 U. S. 611, 180. Both the liberty of contract and the right to property are here involved. The contract was valid, and had been adjudged by the Court having jurisdiction of the foreclosure and sale. The parties to it were willing and were entitled to have the contract executed according to its terms. There is no power in any department of the government to order otherwise."

In the First Employer's Liability Cases (207 U. S. 463) the Court, by Chief Justice White, rejected the argument that one engaged in interstate commerce puts all his *business activities within the reach of federal control.* There it was said:

"It remains only to consider the contention which we have previously quoted, that the act is constitutional, although it embraces subjects not within the power of Congress to regulate commerce, because one who engaged in interstate commerce, **thereby submits all his business concerns to the** regulating power of Congress. To state the proposition is to refute it. It assumes that because one engages in Interstate Commerce he thereby endows Congress with power not delegated to it by the constitution; in other words, with the right to legislate concerning matters of purely state concern. It rests upon the conception that the constitution destroyed that freedom of commerce which it was its purpose to preserve, since it treats the right to engage in interstate commerce as a privilege which cannot be availed of except upon such conditions as Congress may prescribe, even although the conditions would be otherwise beyond the power of Congress. It is apparent that if the contention were well founded it would extend the power of Congress to every conceivable subject,

> however, inherently local; would obliterate all the limitations of power imposed by the constitution, and would destroy the authority of the state as to all conceivable matters which from the beginning have been and must continue to be under their control so long as the constitution endures."

In *United States* v. *DeWitt*, 9 Wall. 41 (1869), an attempt was made under an Internal Revenue Act to punish anyone mixing or selling naptha and illuminating oils. It was held that this was a police regulation, relating exclusively to the internal trade of the States. "*This express grant of power to regulate commerce among* the States has always been understood as limited by its terms; and as a virtual denial of any power to interfere with the internal trade and business of the separate States."

In *Paul* v. *Virginia*, 8 Wall. 168, and in *Ducat* v. *Chicago*, 10 Wall. 410, the Court held that contracts of insurance could not be regulated by Congress.

> *Hill* v. *Wallace*, 259 U. S. 44 (1921) (grain futures);
> *Blumenstock Bros.* v. *Curtis*, 252 U. S. 436 (advertising);
> *Trade Mark Cases*, 100 U. S. 82 (trade marks).

(b) *Bankruptcy.*

In *United States* v. *Fox*, 95 U. S. 670 (1877) the defendant was indicted in a federal court for an offense against the United States which provided that "every person respecting whom proceedings in bankruptcy are commenced" who within three months before their commencement "under the false color and pretense of carrying on business, and dealing in the ordinary course of trade, obtains on credit from any person any goods or

chattels with intent to defraud," shall be punished by imprisonment.

The crime charged against the defendant was that he had obtained on credit goods from merchants in New York City upon the pretense of carrying on business as a manufacturer of clothing, whereas he was in fact carrying on a different business. There it was asserted:

> "There is no doubt of the competency of Congress to provide, by suitable penalties, for the enforcement of all legislation necessary or proper to the execution of powers with which it is entrusted. And as it is authorized 'to establish uniform laws on the subject of bankruptcies throughout the United States' it may embrace within its legislation whatever may be deemed important to a complete an effective bankrupt system.
>
> "The act described is one which concerns only the State in which it is committed: it does not concern the United States."

It should be noted in this connection that bankruptcy laws are express laws that impair the obligations of contracts. That power is specific for that purpose, and includes the power to regulate the relation of debtor and creditor by the process of composition. If this specific power exists for those purposes, it can hardly be said that the power over money includes an implied power to compose and regulate the obligations between creditor and debtor.

In *Kent's Commentaries* (12 ed.), Vol. 1, page 254, Mr. Justice Holmes states:

> "It is hard to see how a limited power, which is expressly given, and which does not come up to a desired height, can be enlarged as an incident

> to some other express power: an express grant seems to exclude implications; the power to coin money means to strike off metallic medals (coins) and to make those medals legal tender (money). If the Constitution says expressly that Congress shall have power to make metallic legal tender, how can it be taken to say by implication that Congress shall have power to make paper legal tender?"

See also dissent by Field, J., in Legal Tender Cases (12 Wall. 651) to the same effect.

(c) *Taxation.*

After the Supreme Court in *Hammer* v. *Dagenhart*, supra, had held the child labor law unconstitutional, an attempt was made to secure the regulation of child labor by placing a tax of ten percent upon the annual net profits of specified industries which employed children of designated ages. The law was held unconstitutional on the ground that the taxing powers of Congress were used for the obvious purpose of regulating child labor. (*Bailey* v. *Drexel Furniture Co.*, 259 U. S. 20.)

> "Does this tax impose a tax with only that incidental restraint and regulation which a tax must inevitably involve? Or does it regulate by the use of the so-called tax as a penalty? If a tax, it is clearly an excise. If it were an excise, on a commodity or other thing of value, we might not be permitted under previous decisions of this court to infer solely from its heavy burden that the act intends a prohibition instead of a tax. But this act is more. It provides a heavy exaction for a departure from a detailed and specified course of conduct in business" * * *

"In the light of these features of the act,' a court must be blind not to see that the so-called tax is imposed to stop the employment of children within age limits prescribed. Its prohibitory and regulatory effect and purpose are palpable. All others can see and understand this. How can we properly shut our minds to it?" * * *

"Grant the validity of this law, and all that Congress need do, hereafter, in seeking to take over its control any one of the great number of subjects of public interest, jurisdiction of which the States have never parted with, and which are reserved to them by the Tenth Amendment, would be to enact a detailed measure of complete regulation of the subject and enforce it by a so-called tax upon departures from it. To give such magic to the word 'tax' would be to break down all constitutional limitation of the powers of Congress and completely wipe out the sovereignty of the States."

Veazie Bank v. *Fenno*, 8 Wall. 533, was there explained and distinguished.

See also *McCray* v. *United States*, 195 U. S. 27, 63, 64.

Consult McReynolds, J., dissenting in *Ruppert* v. *Caffey* (1919) 251 U. S. 264, at page 304, and *Lambert* v. *Yellowley*, 272 U. S. 581, at page 597.

Emergency Power Considered.

It may be contended that the power of Congress to legislate with regard to the subject matter is derived from an alleged emergency. Assuming such an emergency exists, this Court has stated that an emergency cannot

grant a power if none exists. This was recently reaffirmed in both majority and minority views in the case of *Home Building and Loan Association v. Blaisdell*, 290 U. S. 54:

> "Emergency does not create power. Emergency does not increase granted power or remove or diminish the restrictions imposed upon power granted or reserved. The Constitution was adopted in a period of grave emergency. Its grants of power to the Federal Government and its limitations of the power of the States were determined in the light of emergency and they are not altered by emergency. What power was thus granted and what limitations was thus imposed are questions which have always been, and always will be, the subject of close examination under our constitutional system."

The doctrine of this Court applied to emergency legislation should be considered with greater particularity when applied to acts of Congress. When State legislation is involved, it is usually a sovereign body acting under its inherent sovereign powers. In such cases an emergency may call for immediate and drastic action, which, in light of the emergency may be deemed to be reasonable. But Congress acts only with regard to enumerated powers. In such a case an emergency does not create power, nor does it bring forth a dormant power, if none exists. It cannot be the occasion for a new power, if such power cannot be found among the express powers or those powers plainly adapted to a legitimate object. In other words, when Congress acts the power must be found to be an express or implied power. The emergency in such cases adds nothing to the power. If the power exists conditions in economic or social life may be the occasion for its exercise.

If this legislation purports to be based upon an emergency it is defective because there is no time limit set in the law as the duration of the emergency.

Chastleton Corp. v. Sinclair, 264 U. S. 543.

In the recent case of *Worthen v. Thomas*, 292 U. S. 426 (1934) a State statute provided that all proceeds of life and health insurance policies were to be exempt from the claim of creditors. The plaintiff recovered a judgment against the defendant for rent under a lease executed prior to the statute, and sought to execute against the proceeds of a life insurance policy of which the defendant was the beneficiary. This Court held that the statute could not impair the previously created agreement. The contention that the statute was only for the duration of an emergency was met with the reply (p. 432), "But the legislation was not limited to the emergency and set up no conditions apposite to emergency relief" (p. 434). "In the instant case, the relief sought to be afforded is neither temporary nor conditional. In placing insurance moneys beyond the reach of existing creditors, the Act contains no limitations as to time, amount, circumstances, or need. We find the legislation, as here applied, to be a clear violation of the constitutional restriction."

Should it be argued that the power is derived from the power of Congress to borrow money, petitioner submits in reply the very arguments set forth above regarding the alleged money power. In the debates in Congress (77 Cong. Record, p. 4890) Senator Fletcher stated that the reason the gold clause was nullified in private obligations was to provide an easier and more convenient market for government bonds. His thought was the gold clause had to be eliminated from public obligations. Therefore, they had to be eliminated from private bonds. The reason to him was that if gold clauses remained

in private obligations, investors would buy the latter in preference to the former, thereby providing too much competition for the government's market. That thought refutes itself. But it only emphasizes the remote and far-fetched subterfuges used to bring Public Resolution No. 10 within constitutional approval.

The situation is similar to what Mr. Justice Brandeis had in mind in the recent case of *Lynch* v. *United States*, 292 U. S. 571, 580 (1934) when he observed: "Punctilious fulfillment of contractual obligations is essential to the maintenance of the credit of public as well as private debtors."

If the integrity of obligations is essential to the government in concerning itself with its own obligations, then by all the stronger reason, it should not abrogate a private obligation in order to make the marketing of its securities more convenient.

Bankruptcy Power Considered.

Although the petitioner regards as remote any contention that Congress acted under a bankruptcy power, he nevertheless submits that any such argument is untenable. It might be argued that when Congress nullified the gold obligation, and thereby to that extent released the debtor, it acted within the scope and meaning of the bankruptcy clause. In reply, it is nevertheless asserted that bankruptcy, as it is known and has been construed, does not accept such a transaction within its significance. Bankruptcy is not only to provide a discharge for the debtor from his obligation, but is also for the distribution of his assets to his creditors. It is a condition to his discharge that he turn it over to them. (*Sturges* v. *Crowninshield*, 4 Wheat. 122.) The debtor here does not claim to be insolvent; nor does the statute

concern itself with that question. Furthermore, the law makes no provision for the disposition of the assets of the debtor. The release from the debt is merely the incident of bankruptcy. (15 *Harvard Law Review* 829.) In *Sexton* v. *Dreyfus*, 219 U. S. 339, it was said that our bankruptcy laws were taken from England. At the time of the American Revolution bankruptcy meant the seizing of the property of debtors, distributing their estate ratably among creditors, and granting the debtor a discharge. *Friday* v. *Hall & Kaul Co.*, 216 U. S. 449. In *Wilson* v. *City Bank*, 17 Wall 473, it was held to the effect that the primary object of bankruptcy law is to secure distribution of the bankrupt's property among creditors.

The contemporaneous enactment of Sections 77A and 77B to the Bankruptcy Act is indicative that the reorganization of companies and the adjustment of rights between debtors and their creditors come properly under the bankruptcy power.

Summary.

In President Jefferson's letter to Wilson C. Nicholas, Warren, *Supreme Court in the United States History* (Rev. Ed.), Vol. I, page 321, he said: "Our peculiar security is the possession of a written constitution. Let us not make it a blank paper by construction * * * I think it important in the present case [referring to his constitutional authority to execute the Louisiana Purchase] to set an example against broad construction by appealing for new power to the people."

His was an eloquent plea for the amendment of the constitution rather for a construction that would nullify the constitution. Beginning with the case of *Champion* v. *Ames*, 188 U. S. 321, a federal "police power" was developed by a wide significance given to the commerce

power of Congress. A halt, however, was called in *Hammer* v. *Dagenhart*, 247 U. S. 251, to a very fast encroaching federal centralized economic control. Perhaps such control is desirable. In such case, it would be much more convincing if the Constitution were amended. Witness what occurred with the income tax problem in *Pollack* v. *Farmer's Loan and Trust Company*, 157 U. S. 429; 158 U. S. 601, and how the Sixteenth Amendment was subsequently adopted.

If the gold clause legislation is to be considered derived from the money powers of Congress, a new field of unlimited centralized control will be opened with the possible application of the same principles derived from the monetary powers to any and every form of economic activity, including the wages of child labor, payable in money, and suspension of mortgage payments.

True it is that Chief Justice Marshall said (*McCullough* v. *Maryland*, 4 Wheat. 316, 407) "We must never forget that it is a *constitution* we are expounding—a constitution intended to endure for ages to come, and, consequently, to be adapted to the various crises of human affairs." From that statement, however, one cannot gather that in the process of adaptation, the phraseology of the constitution and the plain meaning of its words should be changed to mean something else, when circumstances beckon for adaptation.

From the very statement of the Chief Justice one can just as readily infer that when need arises the Constitution can be amended, and thereby endure for ages. Its survivorship can be predicted with a greater degree of probability if there is confidence that its grants and limitations mean what its plain words connote.

In all events, the meaning of the words should at

least be within the spirit of the Constitution. It will be agreed by all that from its beginning the Constitution has provided for a government consisting of the federal government and that of the states. The history of the colonies, and the debates in the convention, reveal it was the states that were to be the source of autonomous power. The federal government was merely an assistance, a mechanism, where uniformity of action was desired—and those were very limited. Perhaps, with the growing complexity of affairs, it may be a boon to have a federal economic government. But neither the spirit nor the letter of the Constitution provides for it. To permit the monetary power of the federal government to be interpreted as an authority for economic control over obligations payable in money would wipe out the dual form of our indestructable union consisting of indestructable states. *Texas* v. *White*, 7 Wall. 700.

What is desirable is altogether different from what is constitutional. This is especially true when an enumerated power is considered. To exercise a power under a guise may fulfill the needs of the hour. But it may prove to be an irreparable injury to the Constitution and to the faith placed in it. A decision in this case which would approve the attempted exercise of power will become a precedent for similar future attempted exercise of power under a guise. To be sure, precedents are the very life of the Constitution. In this, therefore, lies a very grave concern for our institutions. It may be that enormous property values are at stake (we have above dispelled the fears regarding bankruptcy and chaos). But faith in the Constitution is more precious.

POINT III.

Public Resolution No. 10 deprives the petitioner of his property without due process of law and without just compensation.

At the threshold we are faced with the problem whether the Fifth Amendment is a limitation upon the powers of Congress. In the courts below, the respondent argued that if the power of Congress is found within the powers in the Constitution, then such power is complete without limitation. The early decisions of this Court favored that view. For instance, in *Brushaber* v. *Union Pacific Railway Co.*, 240 U. S. 1 (1916) this Court in a case founded on the taxing power of Congress held that the Fifth Amendment could not limit the express powers of Congress, for that would create a limitation on a grant, which would be contradictory. Previous to that this Court in *McCray* v. *United States*, 195 U. S. 27, held that the Fifth and Tenth Amendments qualify all provisions of the Constitution. See, also, *Flint* v. *Stone Tracy Co.*, 220 U. S. 107, 154; *Adair* v. *United States*, 208 U. S. 161, 172; *Monongahela Navigation Co.* v. *United States*, 148 U. S. 312, 336; *Adkins* v. *Children's Hospital*, 261 U. S. 525, 545, 546, 561.

In *Fairbanks* v. *United States*, 181 U. S. 283, 289, it was said that limitations on grants are to be construed just as liberally as grants are construed.

In his dissenting opinion in *Wilson* v. *New*, 243 U. S. 332, 366, Mr. Justice Day said: "The due process clause restrains alike every branch of the Government, and is binding upon all who exercise federal power, whether of an executive, legislative or judicial character. It withholds from the executive the exercise of arbitrary authority, it prevents the judiciary from condemning one

in his person or property without orderly methods of procedure adapted to the situation, and an opportunity to be heard before judgment. We are now immediately concerned with its effect upon the exercise of legislative authority."

This Court has announced in recent years that even such paramount powers as the commerce (*United States* v. *Chicago, etc., R. R. Co.*, 282 U. S. 311, 327) and tax powers are subject to limitation by the Fifth Amendment.

In *Milliken* v. *United States*, 283 U. S. 15, this Court held a retroactive tax law to be a violation of the due process clause.

Consult also to the same effect *Heiner* v. *Donnan*, 285 U. S. 312, 326; *Nicholas* v. *Coolidge*, 274 U. S. 531; *Untermyer* v. *Anderson*, 276 U. S. 440.

The Impairment of the Obligation of the Contract.

Any law which releases part of an obligation impairs it (*Sturges* v. *Crowninshield*, supra). By the enactment of Public Resolution No. 10, a considerable part of the obligation was released. It may be said that the federal government may impair obligations of contract because there is no prohibition contained in the Constitution forbidding such action. It is just because there is no provision made for the direct impairment of contracts that Congress is prevented from passing a law to that effect. The federal government is one of enumerated delegated powers. If no power to impair contracts is granted, it is difficult to see how the power can be derived. The only power specifically mentioned in the Constitution to impair contracts, is the provision for bankruptcy laws. By necessary implication, bankruptcy laws impair contracts. Therefore, this fact alone indicates

that if the power to impair contracts were intended for the federal government, specific mention would have been made of it. The prohibition against State action, however, was specifically mentioned, because the omission in the Constitution to prohibit the States might have been deemed a permission for such legislation under the sovereign powers of the States which are inherent.

> "It is against all reason and justice for a people to intrust a legislature with such powers, and therefore it cannot be presumed that they have done so." Per Chas., J., in *Calder* v. *Bull*, 3 Dall. 386, 388.

> "Bills of attainder, ex post facto laws, and laws impairing the obligation of contracts, are contrary to the first principles of the social compact, and to every principle of sound legislation * * * Our own experience has taught us, nevertheless, that additional fences against these dangers ought not to be omitted. Very properly, therefore, have the convention added this constitutional bulwark in favor of personal security and private rights, etc." *Federalist*, No. 44.

See also *T. M. Cooley in Story on the Constitution* (4 ed.), Vol. 2, Sect. 1399, page 261.

So far we have considered the lack of power in Congress to *directly* impair the obligation of a contract. We now further submit that such action by Congress deprived petitioner of his property without due process of law.

That the due process clause covers acts of Congress, impairing the obligation of contracts has been established in the *Sinking Fund Cases*, 99 U. S. 700, 718, where it is said:

> "The United States cannot any more than a

> State interfere with private rights, except for legitimate governmental purposes. They are not included within the constitutional prohibition which prevents States from passing laws impairing the obligation of contracts, but equally with the States, they are prohibited from depriving persons or corporations of property without due process of law."

See, also, *United States* v. *Northern Pacific Co.*, 256 U. S. 51, 64; *Choate* v. *Trapp*, 224 U. S. 665, 674.

This Court previously said that if the exercise of power by Congress is *reasonable*, there can be no objection that the obligation is impaired as an incident to such action. (*Marcus Brown Holding Co.* v. *Feldman*, 256 U. S. 170; *Home Building and Loan Association* v. *Blaisdell*, 290 U. S. 398; *New York* v. *United States*, 257 U. S. 591, 601.)

In those cases, this Court insisted that the power be a legitimate exercise of power, and be reasonable. In *Blodgett* v. *Holden*, 275 U. S. 142, this Court held a retroactive tax law unconstitutional in violation of the Fifth Amendment, stating (p. 147): "It seems wholly unreasonable that one who in entire good faith and without the slightest premonition of such consequences, made absolute disposition of his property by gifts should thereafter be required to pay a charge for so doing."

This case is submitted as a determination by this court that even the power of taxation, which has seldom been limited by the Court, nevertheless, is subject to a sense of fair dealing that those who could not reasonably have anticipated such legislation should not be penalized.

It was shown above that numerous similar contracts were created, especially after and in reliance upon the

decision of this Court in *Bronson* v. *Rodes*, supra. Now for the first time holders of such obligations are taken completely unaware by the declaration that such contracts are against public policy and the property rights thereunder confiscated. Such dealing cannot be considered fair or reasonable.

The decisions of *Louisville and Nashville R. R. Co.* v. *Mottley*, 219 U. S. 467 (1911) and *Philadelphia, Baltimore and Washington R. R.* v. *Schubert*, 224 U. S. 603 (1912) can be distinguished.

In the *Mottley* case under the commerce power, the contract, a railroad pass was rendered nugatory and impossible of performance. Although the right to obtain free passage was nullified, nevertheless the Court pointed out in *New York Central Railroad Co.* v. *Gray*, 239 U. S. 583, that the *Mottley* case did not impair the contract so as to prevent the passenger from obtaining the equivalent of the pass and that which was possible to perform.

In the *Schubert* case an exemption provision from the Employers Liability Act was contained in a contract existing before the enactment of the law. It was held that the law did not impair the previously existing contract, because all contracts are made subject to the power of Congress to act and that individuals by "prophetic discernment" could not fetter such powers by previously arranged agreements.

In that case, however, no equivalent for the exemption clause could have been decreed. Therefore the provision fell completely. The action was therefore reasonable.

In the instant case, assuming that Congress had power to abrogate gold clauses, nevertheless, there remained

as in the *Gray* case, supra, the ability to provide for the payment of the equivalent. Congress could not, therefore, nullify the contract entirely, without providing a remedy for the equivalent (legislation over which was outside the power of Congress).

The Taking Without Just Compensation.

If Congress exercised the power to cancel the obligation of gold clauses, because it deemed it necessary for a better regulation of the monetary system, then, in such event, the property of petitioner was taken for a public use. In such event, adequate and just provision should have been made to compensate him for his loss in being required to take "dollar for dollar" in depreciated currency. Thus, in *Monongahela Navigation Co.* v. *United States*, 148 U. S. 312, Congress, acting under its commerce power, sought to improve navigation by at the same time destroying a valuable franchise right. There the Court construed the word "take" not to mean physical dominion only, but to include the destruction of a valuable contract right. Said this Court (p. 336):

> "But like the other powers granted to Congress by the Constitution, the power to regulate commerce is subject to all the limitations imposed by such instrument, and among them is that of the Fifth Amendment, we have heretofore quoted. Congress has supreme control over the regulation of commerce, but if, in exercising that supreme control, it deems it necessary to take private property, then it must proceed subject to the limitations imposed by the Fifth Amendment, and can take only on payment of just compensation."

See, also, *Ochoa* v. *Hernandez*, 230 U. S. 139.

In the *Monongahela* case this Court also said (p. 326) that the noun, "compensation," standing by itself, carries the idea of an equivalent.

Merely to state that a thing "obstructs" the exercise of a power does not take it out of the class of cases where compensation must be paid. In the *Monongahela* case it was sought to prove that the existence of the franchise was an "obstruction" which could be removed without payment. Actually, the franchise was merely an inconvenience. So in this case it is said that the existence of the gold clause provision is an "obstruction" to the regulation of the currency. Actually, it is no obstruction. It was merely a condition of inconvenience that rendered dollar devaluation inopportune. Therefore, the nullification of the obligation was not a regulation but an out and out taking for an alleged public need. See, also, *Osborn* v. *Nicholson*, 13 Wall. 654.

If the taking is not for the public purpose of regulating the currency, then it could only be construed as a taking of the property of the creditor for a *private* purpose, that is, to adjust the alleged inequality between the debtor and creditor.

The Petitioner Was Deprived of the Equal Protection of the Laws.

While no provision is found in the Fifth Amendment guaranteeing the equal protection of the laws, it seems that the provision for due process would assure such treatment.

> *McCray* v. *United States*, 195 U. S. 27, 61, 62;
> *Billings* v. *United States*, 232 U. S. 261, 283;
> *Second Employers Liability Cases*, 233 U. S. 1, 52;

Heiner v. *Donnan*, 285 U. S. 312, 326;
Lappin v. *Dist. of Col.*, 22 App. D. C. 68;
United States v. *Armstrong*, 265 F. 682, 691.

In the debates in Congress, Senator Thomas, in proposing the currency measures adopted by Congress, frankly stated their purpose was to transfer wealth from one class to the other (77 Cong. Record, 2229, ff.). It does not require citation of authority that the theory of our Constitution has not yet reached the point where the government is the adjuster of the disparities of fortune between the rich and poor, between creditor and debtor.

> "Immunity granted to a class, however limited, having the effect to deprive another class, however limited, of a personal or property right, is just as clearly a denial of equal protection of the laws to the latter class as if the immunity in favor of, or the deprivation of the right permitted worked against a larger class." Per Ch. Justice Taft in *Truax* v. *Corrigan*, 257 U. S. 312, 333.

There can be no preferring of one class of persons over another, except in cases where a public purpose is being carried out. (*Barbier* v. *Connolly*, 113 U. S. 27, 32.) Thus in the cedar rust cases, the trees were ordered destroyed because the State in the exercise of its police powers deemed the apple industry of greater importance to the community (*Miller* v. *Schoene*, 276 U. S. 272).

In the instant case, our contention has been not only that Congress did not have the power it exercised, but that a transfer of a property right was made from the class called creditors to those termed debtors, and that the object of the legislation was to fulfill that purpose.

Conclusion.

Wherefore, it is respectfully submitted that the judgment of the Court below should be reversed.

November 5th, 1934.

EMANUEL REDFIELD,
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Attorneys for Petitioner.

APPENDIX A.

Public Resolution No. 10 of the Seventy-third Congress, Approved June 5, 1933, C. 48, § 1, 48 Stat. 113, 31 U. S. Code, § 463.

"JOINT RESOLUTION

TO ASSURE UNIFORM VALUE TO THE COINS AND CURRENCIES OF THE UNITED STATES.

Whereas the holding of or dealing in gold affect the public interest, and are therefore subject to proper regulation and restriction; and

Whereas the existing emergency has disclosed that provisions of obligations which purport to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby, obstruct the power of the Congress to regulate the value of the money of the United States, and are inconsistent with the declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in the payment of debts. Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin

or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. Any such provision contained in any law authorizing obligations to be issued by or under authority of the United States, is hereby repealed, but the repeal of any such provision shall not invalidate any other provision or authority contained in such law.

(b) As used in this resolution, the term 'obligation' means an obligation (including every obligation of and to the United States, excepting currency) payable in money of the United States; and the term 'coin or currency' means coin or currency of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations.

Sec. 2. The last sentence of paragraph (1) of subsection (b) of section 43 of the Act entitled 'An Act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes,' approved May 12, 1933, is amended to read as follows:

'All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations) heretofore or hereafter coined and issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues, except that gold coins, when below the standard weight and limit of tolerance provided by law for the single piece, shall be legal tender only at valuation in proportion to their actual weight.'"

APPENDIX B.

Gold Reserve Act of 1934.

(Public—No. 87—73d Congress, Approved January 30, 1934)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. That the short title of this Act shall be the "Gold Reserve Act of 1934."

SECTION 2. (*a*) Upon the approval of this Act all right, title, and interest, and every claim of the Federal Reserve Board, of every Federal Reserve bank, and of every Federal Reserve agent, in and to any and all gold coin and gold bullion shall pass to and are hereby vested in the United States; * * *

* * * * *

SECTION 3. The Secretary of the Treasury shall, by regulations issued hereunder, with the approval of the President, prescribe the conditions under which gold

may be acquired and held, transported, melted or treated, imported, exported, or earmarked: (*a*) for industrial, professional, and artistic use; (*b*) by the Federal Reserve banks for the purpose of settling international balances; and, (*c*) for such other purposes as in his judgment are not inconsistent with the purposes of this Act. Gold in any form may be acquired, transported, melted or treated, imported, exported, or earmarked or held in custody for foreign or domestic account (except on behalf of the United States) only to the extent permitted by, and subject to the conditions prescribed in, or pursuant to, such regulations. * * *

* * * * *

SECTION 5. No gold shall hereafter be coined, and no gold coin shall hereafter be paid out or delivered by the United States: *Provided, however,* That coinage may continue to be executed by the mints of the United States for foreign countries in accordance with the Act of January 29, 1874 (U. S. C., title 31, sec. 367). All gold coin of the United States shall be withdrawn from circulation, and, together with all other gold owned by the United States, shall be formed into bars of such weights and degrees of fineness as the Secretary of the Treasury may direct.

* * * * *

SECTION 12. Paragraph (*b*) (2), of section 43, title III, of the Act approved May 12, 1933 (Public, Numbered 10, Seventy-third Congress) is amended by adding two new sentences at the end thereof, reading as follows:

> "Nor shall the weight of the gold dollar be fixed in any event at more than 60 per centum of its present weight. The powers of the President

specified in this paragraph shall be deemed to be separate, distinct, and continuing powers, and may be exercised by him, from time to time, severally or together, whenever and as the expressed objects of this section in his judgment may require, except that such powers shall expire 2 years after the date of enactment of the Gold Reserve Act of 1934 unless the President shall sooner declare the existing emergency ended, but the President may extend such period for not more than 1 additional year after such date of proclamation recognizing the continuance of such emergency."

* * * * *

SECTION 13. All actions, regulations, rules, orders, and proclamations heretofore taken, promulgated, made or issued by the President of the United States or the Secretary of the Treasury, under the Act of March 9, 1933, or under section 43 or section 45 of title III of the Act of May 12, 1933, are hereby approved, ratified, and confirmed.

* * * * *

APPENDIX C.

A Proclamation

By the President of the United States of America

* * * * *

WHEREAS, I find, from my investigation, that, in order to stabilize domestic prices and to protect the foreign commerce against the adverse effect of depreciated foreign currencies, it is necessary to fix the weight of the gold dollar at 15 5 21 grains nine-tenths fine.

NOW, THEREFORE, be it known that I, FRANKLIN D. ROOSEVELT, President of the United States, by virtue of the authority vested in me by Section 43, Title III of said Act of May 12, 1933, as amended, and by virtue of all other authority vested in me, do hereby proclaim, order, direct, declare and fix the weight of the gold dollar to be 15 5 21 grains nine-tenths fine, from and after the date and hour of this proclamation. The weight of the silver dollar is not altered or affected in any manner by reason of this proclamation.

This proclamation shall remain in force and effect until and unless repealed or modified by act of Congress or by subsequent proclamation; and notice is hereby given that I reserve the right by virtue of the authority vested in me to alter or modify this proclamation as the interest of the United States may seem to require.

IN WITNESS WHEREOF I have hereunto set my hand and have caused the seal of the United States to be affixed.

DONE in the City of Washington at 3:10 o'clock in the afternoon, Eastern Standard Time, this 31st day of January, in the year
(SEAL) of our Lord one thousand nine hundred and thirty-four, and of the Independence of the United States the one hundred and fifty-eighth.

FRANKLIN D. ROOSEVELT.

By the President:

CORDELL HULL,
Secretary of State.

Approved and effective January 31, 1934.

APPENDIX D.

Anderson, B. M.—The Fallacy of the Stabilized Dollar.

Angell, N.—Story of Money.

Atkins, W. E.—Gold and Your Money.

Coughlin, C. E.—New Deal in Money.

Edie, L. D.—Dollars.

Encyclopedia of the Social Sciences, Vol. 6, p. 689 "Gold."

Fisher, I.—Inflation.

Fisher, I.—After Reflation What.

Garis, R. L.—Principles of Money and Credit.

Hardy, C. O.—Devaluation of the Dollar.

Kemmerer, E. W.—On Money.

Keynes—A Treatise on Money, 2 Vols.

Magee, J. D.—Introduction to Money and Credit.

Spahr, W. E.—The Monetary Theories of Warren and Pearson.

Sparling, E.—Primer of Inflation.

Warburg, J. P.—Money Muddle.

Warren & Pearson—Prices.

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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1934.

No. 471.
In Bankruptcy.

BANKERS TRUST COMPANY et al.,
Appellants,
vs.
RECONSTRUCTION FINANCE CORPORATION, L. W. BALDWIN and GUY A. THOMPSON, Trustees of MISSOURI PACIFIC RAILROAD COMPANY, UNITED STATES OF AMERICA et al.,
Appellees.

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RECONSTRUCTION FINANCE CORPORATION et al.,
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On Certiorari from the United States Circuit Court of Appeals for the Eighth Judicial Circuit.

BRIEF

OF TRUSTEES OF THE MISSOURI PACIFIC RAILROAD COMPANY UPON THE VALIDITY OF THE GOLD CLAUSE IN THE BONDS AND MORTGAGE OF THE ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, RIVER AND GULF DIVISIONS.

EDWARD J. WHITE,
Counsel for Trustees.

St. Louis Law Printing Co., 415 North Eighth Street. CEntral 4477.

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STATEMENT.

Trustees for the Debtor adopt the Statement and Brief filed by the United States Government and the Reconstruc-

tion Finance Corporation and, in addition thereto, because of the large, financial interest of the Trustees of the Debtor in the issue involved in this case, said Trustees submit the following separate Statement and Brief:

The issue in this case is between the Bankers Trust Company, as trustee of the St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions, first mortgage, and the trustees of the Missouri Pacific Railroad Company, Debtor, over the validity of the gold clause in the bonds which said mortgage was given to secure.

The controversy, as originally presented to the United States District Court administering the bankruptcy proceedings of said Missouri Pacific Railroad Company, Debtor, was thus a dispute between private parties, borrower and lender, over the amount due upon written bonds and a mortgage contract.

The meaning, purpose and intent of the language in the bonds is unambiguous.

In answer to the petition of the Bankers Trust Company, setting up the validity of the gold clause of said bonds and mortgage, the trustees of the Debtor and its creditors, including the United States Government and the Reconstruction Finance Corporation, set up that the gold clause of said bonds and mortgage was illegal because in conflict with the resolution of Congress embodied in Public Resolution 10, now Clause 463, Title 31, U. S. C., passed by Congress on June 5, 1933.

The mortgage in question contained the provision that

the bonds secured thereby, in the sum of $34,548,000.00, which are now outstanding, would be paid in gold coin of the United States of the standard of weight and fineness prevailing on May 1, 1903, the date of the execution and delivery of said mortgage (Tr. Rec., pp. 54-58).

Said Section 463 of Public Resolution 10, above referred to, provides as follows:

> "Every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular amount of coin or currency, or in an amount of money measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred.
>
> "Every obligation heretofore or hereafter incurred, whether any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any kind of currency which, at the time of payment, is legal tender for private debts."
>
> Public Resolution 10, now Section 463, Title 31, U. S. C., passed June 5, 1933.

Upon the issue thus presented, Hon. Charles B. Faris, United States District Judge administering the bankruptcy proceedings of said Missouri Pacific Railroad Company, Debtor, in an able and scholarly opinion, on May 24, 1934, upheld the validity of said resolution of Congress and held the gold clause of said bonds and mortgage was void (Tr. Rec., pp. 109-128).

In this opinion, in discussing the disastrous effects to the Debtor, Missouri Pacific Railroad Company, and its trustees if the bonds secured by said mortgage and the other mortgages upon the Debtor's property containing a gold clause should be paid in gold, the Court said:

> "Can it be doubted that if the Debtor here shall be compelled to pay $743,000,000 upon its mortgage indebtedness instead of $438,000,000, it will be utterly bankrupted and financially destroyed; that its general creditors and stockholders will get nothing, and even its bondholders will be paid only part of their inflated debt?" (Tr. Rec., p. 113.)

As stated by the Court, if the gold clause of the bonds in question is enforceable in law in this mortgage and others of the Debtor which contain such gold clause, instead of its funded debt being $438,000,000, said funded debt would total the enormous sum of $743,000,000.

It will thus be seen that the issue presented is a most important one, not only in this bankruptcy proceeding, because of the fact that the Debtor's mortgages, containing similar gold clauses, in the event that same are valid, would result in an increase of its bonded debt from $438,000,000 to $743,000,000, but also because the issue is squarely presented of the power of the Government, under the Constitution, to enact the joint resolution of June 5, 1933, fixing the monetary standard in the United States.

BRIEF.

I.

The Joint Resolution of Congress of June 5, 1933, Was a Valid Exercise of the Government's Legislative Power Under Section 8, Article I of the Constitution.

Section 8, Article I of the Constitution, expressly delegates to Congress the power "to coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures." And the same section contains the broad delegation of power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers, vested by this Constitution in the Government of the United States, or in any department or officer thereof" (Section 8, Article I, Constitution of the United States).

In the Resolution of June 5th, Congress provided that:

> "Every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, **or in an amount in money of the United States measured thereby**, is declared to be against public policy. * * * Every obligation heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts."

Construing the fifth clause of section 8 of the Constitution, the Supreme Court, in the Legal Tender cases, speaking through Mr. Justice Strong, said:

> "If it be held by this Court that Congress has no constitutional power, under any circumstances, or in any emergency, to make treasury notes a legal tender for the payment of all debts (a power confessedly possessed by every individual sovereign other than the United States), the Government is without those means of self-preservation which, all must admit, may, in certain contingencies, become indispensable, even if they were not when the acts of Congress now called in question were enacted. It is also clear that if we hold the acts invalid as applicable to debts incurred, or transactions which have taken place since their enactment, our decision must cause, throughout the country, great business derangement, widespread distress, and the rankest injustice. * * * A decent respect for a co-ordinate branch of the Government demands that the judiciary should assume, until the contrary is clearly shown, that there has been no transgression of power by Congress—all the members of which act under the obligation of an oath of fidelity to the Constitution. * * * No single power is the ultimate end for which the Constitution was adopted. It may, in a very proper sense, be treated as a means for the accomplishment of a subordinate object, but that object is itself a means designed for an ulterior purpose. Thus the power to levy and collect taxes, to coin money and regulate its value, to raise and support armies, or to provide for and maintain a navy, are instruments of the paramount object, which was to es-

tablish a government, sovereign within its sphere of capability of self-preservation, thereby forming a union more perfect than that which existed under the old Confederacy. * * * We do not propose to dilate at length upon the circumstances in which the country was placed when Congress attempted to make treasury notes a legal tender. They are of too recent occurrence to justify enlarged description. Suffice it to say that a civil war was then raging, which seriously threatened the overthrow of the Government and the destruction of the Constitution itself. * * * It was at such a time and in such circumstances that Congress was called upon to devise means for maintaining the army and navy, for securing the large supplies of money needed, and, indeed, for the preservation of the Government created by the Constitution. * * * Concluding, then, that the provision which made treasury notes a legal tender for the payment of all debts other than those expressly excepted, was not an inappropriate means for carrying into execution the legitimate powers of the Government, we proceed to inquire whether it was forbidden by the letter or spirit of the Constitution. It is not claimed that any expressed prohibition exists, but it is insisted that the spirit of the Constitution was violated by the enactment. * * * They claim that the clause which conferred upon Congress power 'to coin money, regulate the value thereof, and of foreign coin,' contains an implication that nothing but that which is the subject of coinage, nothing but the precious metals, can ever be declared by law to be money or to have the uses of money. * * * We do not, however, rest our assertion of the power of Congress to enact legal tender laws upon this grant. We assert only that the grant can, in

no just sense, be regarded as containing an implied prohibition against their enactment, and that, if it raises any implications, they are a complete power over the currency, rather than restraining. * * * Nor can it be truly asserted that Congress may not, by its action, indirectly impair the obligation of contracts, if by the expression be meant rendering contracts fruitless or partially fruitless. Directly it may, confessedly, by passing a bankrupt act, embracing past as well as future transactions. This is obliterating contracts entirely. So it may relieve parties from their apparent obligations indirectly in a multitude of ways. * * * If, then, the legal tender acts were justly chargeable with impairing contract obligations, they would not, for that reason, be forbidden unless a different rule is to be applied to them from that which has hitherto prevailed in the construction of other powers granted by the fundamental law."

12 Wallace, 79 U. S. 459, 548-549.

Thus was this historic controversy over the legal tender issue decided by this Court following the Civil War.

In Smith v. Kansas City Title & Trust Co. (255 U. S. 180), where the provisions of the Federal Farm Loan Act of July 17, 1916, were before the Supreme Court for interpretation, the Court held, in the opinion of Mr. Justice Day, that under the fifth clause of section 8, article I, Congress had the exclusive power "to coin money, regulate the value thereof," etc. In the course of the opinion the Court said:

"Congress, it was held, had authority to use such means as were deemed appropriate to exercise the great powers of the Government by virtue of Article I, Section 8, Clause 18 of the Constitution, granting to Congress the right to make all laws necessary and proper to make the grant effectual. * * * But, it is urged, the attempt to create these federal agencies and to make these banks fiscal agents and public depositories of the Government is but a pretext. But nothing is better settled by the decisions of this Court than that when Congress acts within the limits of its constitutional authority it is not the province of the judicial branch of the Government to question its motives."

255 U. S. 180.

This Clause 5 of Section 8, Article I of the Constitution was before the District Court at St. Louis in the recent case of Kercheval v. Ross, No. 10,633, wherein the Court handed down an opinion February 24, 1934, involving the validity of the Missouri statute, which attempted to impair the obligation of a contract payable in gold. The defendants contended that the statute was valid, under Knox v. Lee and Parker v. Davis (12 Wallace 457), known as the legal tender cases. The District Court—Judge Faris—distinguished between the power of Congress and the power of the Missouri Legislature in this language:

"Let us look a moment to these differences in sovereign functions and organic law:

"Disassociated from international exigencies, or,

more accurately, from the necessities of commerce between nations, and inhibitions, if any, found in the organic law, every sovereignty has the inherent power to decree anything to be money or a medium of exchange which it may desire; as witness the iron coins of Sparta and, among uncivilized tribes, the wampum belts of the American Indians and the grindstones of the islands of the Southern Seas, and other historical instances of the use as money of practically worthless substances, which are too numerous to mention.

"It will be observed that the Federal Constitution nowhere categorically limits money to gold and silver, or even to metallic substances. It does say that 'the Congress shall have power * * * to coin money (and) regulate the value thereof.' If it be argued that the Congress, by the use of the transitive verb 'coin' in the language quoted, intended that the money of the United States should be limited only to such metals as are capable of being coined or minted, this argument is met by the decision of the Supreme Court of the United States in Knox v. Lee and Parker v. Davis, 12 Wall. 457, the so-called legal tender cases. But such an argument is also met by the very language which concludes the sentence quoted; for, obviously, if the Congress has power to regulate the value of the coined or minted money of the United States, it may, so far as the Constitution is concerned, fix its value, or its so-called previous metal content, so low that, when judged by the standards of other nations, its value will be less than that of the paper on which so-called fiat money is printed.

"There is no express constitutional inhibition anywhere to be found which forbids the Congress from passing an act which violates the obligation of a pre-

existing contract. Not only will the Federal Constitution be read in vain to find such a provision, but the Supreme Court of the United States has repeatedly so ruled (Hepburn v. Griswold, 8 Wall., l. c. 623; Mitchell v. Clark, 110 U. S., l. c. 643; Legal Tender Cases, 12 Wall. 457; New York v. United States, 257 U. S., l. c. 601). If occasionally the Supreme Court has seemed to find such inhibition, it has deduced it from the so-called spirit of the Constitution (see Hepburn case, supra), or it has allocated it (many times, no doubt, correctly) among the numerous offspring of that fertile and elastic provision touching 'due process of law,' found in the Fifth Amendment. It is not, I repeat, to be found in any of the language of either the Constitution or of the several amendments thereto.

"I have never been able to see wherein the unhampered exercise by the Congress of the power to declare what shall be the medium of exchange at all impinges upon 'due process of law' when the constituent elements of that term are considered (Duncan v. Missouri, 152 U. S., l. c. 382; State v. Guerringer, 265 Mo. 409). For there is the very highest judicial authority for the statement that

> " 'whatever power there is over the currency is vested in Congress. If the power to declare what is money is not in Congress, it is annihilated' (Legal Tender Cases, 12 Wall., l. c. 545).

"Being in Congress, this power cannot be in any state, because of the paramountcy of federal statutes and of the Federal Constitution, for the Federal Constitution expressly takes the power from the states 'to emit bills of credit (or) make anything but gold

and silver coin a tender in payment of debts' (Article I, Section 10, United States Constitution). The express power granted to the Congress 'to coin money (and) to regulate the value thereof' was necessary only in an historical sense and for the sake of clarity; this, for the reason that each of the original thirteen sovereign states had, in virtue of their sovereignties, the inherent right to say what should be the medium of exchange, or money, within their several jurisdictions. But for this fact and the further fact that a voluntary union of independent states to form a single sovereign entity was then unique and unusual in this world, it would not have been necessary to confer express power on the Congress to deal with money. But the states each had this power, and it was deemed wise to take it from them. Therefore, induced, evidently, by the settled theory that the Federal Constitution is a grant and not a limitation of power, it was deemed wise to express the power, and this was done. But, I repeat, this was not necessary. The United States having, in effect, taken the power from the states, would have inherited it and possessed it, by virtue of its own sovereignty, even if it had not been mentioned in the organic law."

* * * * * * *

"So I am of opinion that the United States has, through the Congress, the constitutional power to prescribe by statute what is legal tender for the payment of both public and private debts, either subsequent or antecedent in their accrual to the passage of the law. In fact, this identical thing has been done; it has passed laws, held to be valid, wherein, both directly and by indirection, pre-existing contracts were

violated. Moreover, by the Act of June 5, 1933, it did in principle what is tantamount thereto; that is to say, by the act last above referred to, it decreased the gold content of the gold coins of the United States, which, of course, indirectly, if not directly, impaired the obligations of existing contracts.

"In the absence of any provision in the Federal Constitution forbidding the passage of a statute which violates the obligation of a contract, and in the light of the ruling of the Supreme Court in the Legal Tender Cases, supra, it seems impossible to escape the conclusion that the Congress possesses the power to say what shall be the medium of exchange, even though the exercise of the power may indirectly result in the impairment of the obligation of existing contracts. But it does not follow that a state of the Union may do the like, or that it has any such power. This, for the reasons that not only does Section 10, Article I of the Constitution of the United States, forbid a state from passing any law impairing the obligation of a contract, but the Constitution of Missouri itself forbids such a law (Section 15, Article II, Constitution of Missouri 1875).

"Even, perhaps, if this were not so as a matter of law, it would become so as a matter of fact, because of the limited amount of gold and the almost unlimited sum of obligations promised to be paid in gold. I do not lose sight, of course, of the well-known economic fact that, due to normal circulation, a billion dollars in gold may serve to pay several billion dollars of gold obligations, if the gold is moving freely."

It may be contended that the Court's remarks in this important case were obiter, since the issue involved was the constitutionality of the state statute, and not an act of Congress, but in view of the contention of the defendants, the Court, as the above-quoted language will indicate, construed the power of Congress under the Fifth Clause of Section 8, Art. I of the Constitution of the United States.

Counsel for the Trust Company contend that the parties to the contract "meant by the gold clause that the Railroad Company should assume the risk of the depreciation of the currency before the bonds were paid, and the gold clause was intended as a measure of the value of the bonds," etc., and that the parties to this contract "thereby adopted the gold clause as a means by which the amount of their indebtedness was to be measured and ascertained, if there should be a depreciation of the currency before they were paid."

If the joint resolution approved by Congress on June 5, 1933, is a valid exercise of power by the Congress, then this argument falls, because it could be applied as to every obligation which is stricken down by the congressional resolution. Congress provided that:

> "**Every obligation, heretofore or hereafter incurred,** whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts."

The Joint Resolution of Congress of June 5, 1933, expressly providing that such gold clauses as the Debtors' bonds in this case contain should be "discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts," and this Resolution being within the constitutional power of Congress under Section 8, Article I of the Constitution, said Gold Clause is and should be adjudged void by this Court.

II.

The Resolution of June 5, 1933, Was Within the Power of Congress Under the General Welfare Clause of the Constitution.

The preamble of the Constitution of the United States shows that the Constitution was originally framed to "promote the general welfare" of the people of the United States, and section 8, article I, expressly delegates to Congress the power "to * * * provide for the common defense and **general welfare of the United States.**"

In Massachusetts v. Mellon, 262 U. S. 448, the constitutionality of the "Maternity Act" of November 23, 1921 (42 Stat. 224), was questioned by the Commonwealth of Massachusetts. Mr. Justice Sutherland decided the case and in upholding the act of Congress the Court said:

> "The functions of government under our system are apportioned. To the legislative department has been

committed the duty of making laws; to the executive department the duty of executing them, and to the judiciary the duty of interpreting and applying them in cases properly brought before the courts. The general rule is that neither department may invade the province of the other, and neither may control, direct or restrain the action of the other."

Alexander Hamilton construed the General Welfare Clause as authorizing Congress to make appropriations for any public purpose connected with the general welfare of the United States. He expressly stated this doctrine in his report to manufacturers in 1791 (Storey, Constitution, 5th Ed., 978). This view was adopted and followed by Storey (Storey, Constitution, 5th Ed., Secs. 975, 992). Certainly there was need for the exercise by Congress of power following the late World War to provide in no uncertain way for the "general welfare" of the people of the United States.

Bankruptcies in all kinds of business existed in every state of the Union, state and municipal governments became insolvent, there was dire distress among the agricultural classes of the country, and it was estimated that between twelve and fifteen million people were out of employment. Legislation that Congress has adopted, such as the amendment of the Bankruptcy Act to provide for the reorganization of the capital structure of railroads, the National Industrial Recovery Act, under which the Government has virtually established a governmental super-

vision of private business to encourage employment and help relieve the widespread distress of its citizens; the Railroad Emergency Act, the Public Works Act and the relief for agriculturists, along with the resolution of June 5th, setting aside such obligations as we find in this mortgage, were all necessary and were constitutional enactments under the General Welfare Clause of the Constitution.

See Heisler v. Colliery Co., 260 U. S. 245.

But counsel for the Trust Company say, regarding the resolution of Congress:

> "From this preamble it is clear that the resolution does not even purport to be an emergency measure. * * * But, even if the resolution purported to be an emergency measure, the emergency does not create power."

In view of the conditions existing following the World War, it cannot be doubted, according to the historical facts of which the Court will take judicial notice, that a grave emergency confronted the National Government. Of course, "an emergency does not create power." The Constitution in our Government creates the power, but the emergency is the occasion for the exercise of the power, and it certainly cannot be doubted that there was sufficient emergency to justify the exercise of the power of Congress in the enactment of the resolution of June 5, 1933.

Under the General Welfare Clause of the Constitution, Congress has a large discretion as to the means to be employed in the exercise of any power granted to it.

> Northern Securities Co. v. United States, 193 U. S. 343;
> Fairbank v. United States, 181 U. S. 287.

Congress is not limited in its employment of means to those that are absolutely essential to the accomplishment of the objects within the scope of the powers granted to it. The test of the power of Congress is not necessarily the judgment of the courts that a particular means was the best that could have been employed to effect the end contemplated by the National Legislature.

The power of the judiciary is limited to inquiring into whether or not the means exercised by Congress in the execution of a granted power were forbidden by the organic law. If within the Constitution, the act of the legislative branch of government is exclusive.

> Interstate Commerce Commission v. Brimson, 154 U. S., l. c. 473.

In other words, under the general grant of power, in Article One, Section Eight of the Constitution, Congress may use any means appearing to it most eligible and appropriate which are adapted to the end to be accomplished and which are consistent with the letter and spirit of the Constitution.

> Logan v. United States, 144 U. S. 282.

This necessarily follows from the very nature of the duties to be performed by the three separate departments of Government.

The courts cannot legislate, nor can the executive department of the Government alone act in a national emergency, such as existed in this country following the World War. Legislation was necessary to preserve the very existence of the Government and its free institutions.

The General Welfare Clause of the Constitution left the Congress a broad discretion as to the means to be employed in such emergency. The performance of the high duties assigned to Congress in the manner most beneficial to the people vested a discretion as to the necessary and proper execution of its power in Congress.

Legal Tender Cases, 12 Wall. 538.

If the end be legitimate and within the scope of the Constitution, all means which are appropriate and adapted to that end and which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional.

McCulloch v. State of Maryland, 4 Wheat. 316.

In interpreting the Constitution, every word must have due force and appropriate meaning, since it is evident from the whole instrument that no word was unnecessarily used or needlessly added.

Holmes v. Jennison, 14 Peters 540;

Ogden v. Saunders, 12 Wheat. 213;
Cohens v. Virginia, 6 Wheat. 264;
Meyers v. United States, 272 U. S. 52.

This rule of interpretation would apply as well to the language used in the Preamble to the Constitution, to **"promote the general welfare and secure the blessings of liberty,"** as to other articles and sections of the Constitution, as this Court has squarely held that the Preamble is a necessary source of substantive power, consistent with the other specially delegated powers contained in the different articles and sections of the Constitution.

Dorr v. United States, 195 U. S. 140;
Jacobson v. Massachusetts, 197 U. S. 11-22;
Sturgis v. Crowninshield, 4 Wheat. 122-202;
1 Story's Constitution 462.

And, where the declared object of the Constitution, as set forth in the Preamble, is to

"Promote the general welfare,"

and, by section eight of article one, this broad grant of power,

"To * * * provide for the common defense and **general welfare** of the United States,"

is expressly delegated to Congress, for stronger reasons, this repetition of the object of the Constitution, coupled with the express grant of general powers,

"To * * * provide for * * * the **general welfare** of the United States,"

should be held to include all means adopted by Congress to attain the ends in view which are not expressly prohibited by the Constitution. Accordingly, this grant of power to Congress has been held to include the federal operation of railroads,

Northern Pacific v. State of North Dakota, 250 U. S. 135;

to provide an Emergency Fleet Corporation,

United States v. Walter, 263 U. S. 18;

to provide for federal food control,

United States v. Cohen Grocer Co., 255 U. S. 81,

and other incidental powers necessary **"to promote the general welfare."**

See, also,

U. S. Grain Corporation v. Phillips, 261 U. S. 106.

"Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional."

McCulloch v. Maryland, 4 Wheat. 316, 421.

III.

In This Bankruptcy Proceeding the Court Possessed the Power, Under the Constitution, to Impair the Existing Obligations of Contracts.

The Constitution of the United States (Section Eight, Article One) vests in Congress the power to adopt "uniform laws on the subject of bankrupteies throughout the United States." This grant of power has been held to include the distribution of the property of the Debtor among his creditors and his discharge from all contracts and legal liabilities.

Pope v. Title Guaranty Co., 152 Wisc. 611, 140 N. W. Rep. 348.

This grant has been held to vest in Congress a plenary power over the subject of bankrupteies. One of the incidents of the power granted is the right of the Debtor, under the decision of the Administrative Judge, to be discharged from his contracts and legal liabilities, as well as the intermediate and incidental matters tending to the accomplishment, or the promotion, of these two principal ends.

The only limitation upon the power granted to Congress is that its bankruptcy laws "**shall be uniform throughout the United States.**"

Silverman's Cases, 22 Fed. Cas. 12,855, 2 Abb. U. S. 243-247, 1 Sawyer 410;

Mitchell v. Great Works Milling Co., 17 Fed. Cas. 9662, 2 Story 648.

See, also:

Leidigh Carriage Co. v. Stengel et al., 95 Fed. 637-646, 37 C. C. A. 210.

Indeed, the primary purpose of the bankruptcy laws is to secure an equal and speedy distribution of the property of the bankrupt among his creditors, and all bankruptcy acts have, as an ultimate object, the relieving of the Debtor of his debts, to enable him to have a fresh start in business life.

In re Swofford Bros. Dry Goods Co., 180 Fed. 549;
Pirie v. Chicago Title Co., 182 U. S. 438.

One of the primary functions of the administrative judge in a bankruptcy case is the determination of the validity and amount of the liens against the bankrupt's property.

"Where property, subject to a lien, is in the custody of a court of bankruptcy and the legal title thereto is held by the trustee in bankruptcy, such court has jurisdiction to hear and to determine the question as to the validity and amount of the lien."

7 Corpus Juris, Sec. 307, p. 203;
In re Kligerman, 219 Fed. 758;
In re National Boat & Engine Co., 216 Fed. 208.

The trustees appointed by the bankruptcy court are administering the property of the Missouri Pacific Railroad Company under the Railroad Amendment to the Bankruptcy Act (Section 77, Chapter Eight of said act), approved March 3, 1933; hence the right of the Court to impair the obligation of the gold clause of the bonds in controversy is to be determined by the rules obtaining in bankruptcy courts.

In the case of

In re Franklin Brewing Co., 249 Fed. 334,

Circuit Judge Hough, for the Court of Appeals of the Second Circuit, held that

> "Congress, in the exercise of its constitutional power to establish systems of bankruptcy, may, and indeed always does, impair the obligation of the contracts."
>
> In re Franklin Brewing Co., 249 Fed. 335.

This Court approved the same doctrine in

Mitchell v. Clark, 110 U. S. 643;
Canada Ry. Co. v. Gebhard, 109 U. S. 530.

See, also,

Van Huffel v. Harkelrode, 284 U. S. 224,

where this Court, in an opinion by Mr. Justice Brandeis, held that

"Bankruptcy courts have power to order the property of a bankrupt's estate shall be sold free from liens * * * and that such liens shall be transferred to the trustees."

In the **Van Huffel** case the following occurred in the course of the opinion of the Court:

"The present Bankruptcy Act (July 1, 1898, 30 Stat. at L. 544, chap. 541, U. S. C., title 11, paragraph 1), unlike the Act of 1867, contains no provision which in terms confers upon bankruptcy courts the power to sell property of the bankrupt free from encumbrances. We think it clear that the power was granted by implication. Like power had long been exercised by federal courts sitting in equity when ordering sales by receivers or on foreclosure (First Nat. Bank v. Sheld, 121 U. S. 74, 87, 30 L. Ed. 877, 882, 7 S. Ct. 807; Mellen v. Miline Malleable Iron Works, 131 U. S. 352, 367, 33 L. Ed. 178, 183, 9 S. Ct. 781). The lower federal courts have consistently held that the bankruptcy court possesses the power, stating that it must be implied from the general equity powers of the court and the duty imposed by Section 2 of the Bankruptcy Act to collect, reduce to money and distribute the estates of bankrupts, and to determine controversies with relation thereto.

"No good reason is suggested why liens for state taxes should be deemed to have been excluded from the scope of this general power to sell free from encumbrances. Section 64 of the Bankruptcy Act grants to the court express authority to determine 'the amount or legality' of any tax.

"To transfer the lien from the property to the pro-

ceeds of its sale is the exercise of a lesser power; and legislation conferring it is obviously constitutional. Realization upon the lien created by the state law must yield to the requirements of bankruptcy administration. Compare International Shoe Co. v. Pinkus, 278 U. S. 261, 73 L. Ed. 318, 49 S. Ct. 108; Isaacs v. Hobbs Tie & Timber Co., 282 U. S. 734, 75 L. Ed. 645, 51 S. Ct. 270; Straton v. New, 283 U. S. 318, 75 L. Ed. 1060, 51 S. Ct. 465. In many of the cases in the lower federal courts the order of sale entered was broad enough to authorize a sale free from tax liens as well as from others; and in some of them it appears affirmatively that liens for taxes were treated as discharged by the order. No case has been found in which the power to sell free from the lien of state taxes was denied."

Van Huffel v. Harkelrode, 284 U. S. 227, 228 and 229.

In

Canada Southern Ry. Co. v. Gebhard, 109 U. S. 528,

the holders of mortgage bonds of the Canada Southern Railway Company had exchanged underlying bonds for a new bond issue under the Canada Arrangement Act of 1878, and the holders of a minority of these bonds objected to the arrangement under which their bonds were to be substituted for the new bond issue. This Court, in the opinion by Mr. Chief Justice Waite, held:

"As individual holders of mortgage bonds issued by a railroad corporation, and secured by the same mortgage, have mutual contract interests and rela-

tions, there is nothing inequitable, when the power exists, in subjecting a small minority to the will of a decided majority in reorganizing the mortgage indebtedness when the corporation is embarrassed. Semble, That if this were done by virtue of a statute of the United States, enacted under the provision of the Constitution conferring power to establish uniform laws on the subject of bankruptcy, it would not be regarded as impairing the obligation of a contract."

In the course of the opinion in that case Chief Justice Waite said:

"It is in entire harmony with the spirit of bankrupt laws, the binding force of which, upon those who are subject to the jurisdiction, is recognized by all civilized nations. It is not in conflict with the Constitution of the United States, which, although prohibiting states from passing laws impairing the obligations of contracts, allows Congress 'to establish * * * uniform laws on the subject of bankruptcy throughout the United States.' Unless all parties in interest, wherever they reside, can be bound by the arrangement which it is sought to have legalized, the scheme may fail. All home creditors can be bound. What is needed is to bind those who are abroad. Under these circumstances, the true spirit of international comity requires that schemes of this character, legalized at home, should be recognized in other countries."

Canada Southern Ry. Co. v. Gebhard, 109 U. S. 539.

To the same effect was the opinion of Mr. Justice Miller, for this Court, in

Mitchell v. Clark, 110 U. S. 634,

where the Court said:

> "That a similar statute in regard to suits by or against an assignee in bankruptcy governs the state courts, see **Jenkins v. The Bank**, 106 U. S. 571, and **Jenkins v. Lowenthal**, 110 U. S. 222.
>
> "It is no answer to this to say that it interferes with the validity of contracts, for no provision of the Constitution prohibits Congress from doing this, as it does the states; and where the question of the **power** of Congress arises, as in the legal tender cases, and in bankruptcy cases, it does not depend upon the incidental effect of the power itself."
>
> Mitchell v. Clark, 110 U. S., l. c. 643.

Under the Railroad Amendment to the Bankruptcy Act the Interstate Commerce Commission and the court administering a bankruptcy proceeding are authorized to provide for a plan of reorganization of the capital structure of the Debtor, which will not differentiate between the different classes of secured creditors, and the Act of Congress expressly provides that

> "the confirmation of the plan shall discharge the Debtor from its debts, except as provided in the plan."
>
> Paragraph (h), Sec. 77, Railroad Amendment to the Bankruptcy Act.

The plan for the reorganization of the Debtor railroad's capital structure is to be consistent, not only with the interests of the Debtor and its creditors, but also **"compatible with the public interests."**

> Paragraph (f), Sec. 77, Railroad Amendment to the Bankruptcy Act.

It certainly would not be consistent with the "public interest" to permit some of the Debtor's creditors to recover the equivalent of their debt in gold in the face of the Constitutional Act of Congress, enacted to protect "the public interest" against just such contracts.

See:

> Re American Magnestone Co., 34 Fed. (2d) 681;
> Phoenix Building & Homestead Ass'n v. E. A. Carrere's Sons, 33 Fed. (2d) 563.

It has been uniformly held in the reorganization of railroads in equity receiverships that contracts and equities of creditors and stockholders can be set aside by the Administrative Judge.

In

> Phipps v. C. R. I. & P. Ry. Co., 284 Fed. 945,

the Court decreed a reorganization without a sale and the reorganization plan offered to each unsecured creditor 6 per cent preferred stock of the reorganized company to the

amount of his claim, par for par, and the Court of Appeals, in an opinion by Judge Sanborn, upheld this offer as within the power of the Court of Equity.

It further appears from the decision of Judge Sanborn in

North American Co. v. St. L.-S. F. Ry. Co.,
28 Fed. (2d) 174,

that this offer yielded unsecured creditors but 25 per cent of their claims.

See, also,

St. L.-S. F. Ry. Co. v. McElvane, 253 Fed. 123.

The same thing was done in the reorganization of the Missouri Pacific Railway Company in 1917, first mortgage bondholders of the Railway Company having been given preferred stock in the new company, and this offer was upon complaint of creditors, held to be equitable because the stockholders had been assessed $50.00 per share on their common stock, for which they were given junior bonds.

See

Guaranty Trust Co. v. Mo. Pac. Ry. Co., 238 Fed. 812,
and 284 Fed. 952.

See, also,

Kansas City Terminal Ry. Co. v. Central Union
Trust Co., 28 Fed. (2) 176,

involving reorganization of the Missouri-Kansas-Texas Railway Company; and

Kansas City, Mexico & Orient Ry. Co. v. Trustees,
18 Fed. (2) 765,

involving reorganization of the Kansas City, Mexico & Orient Railway Company.

Indeed, the distinguishing feature between a bankruptcy proceeding and an equity receivership is that, while a Court administering a receivership cannot force a creditor to accept less than the full amount of his debt, the property can be sold, under order of the Court, and the liens of creditors divested, whereas, in a bankruptcy proceeding, the right of the Administrative Judge to compel a creditor to take less than the full amount of his debt is one of the incidents of the power vested in a bankruptcy court, under the Constitution.

In other words, not only under the Monetary Clause of the Constitution, but also under the General Welfare Clause and the Bankruptcy Section of the Constitution the decision of the District Court in this case should be upheld.

IV.

The Inhibition Against the Impairment of Contract Obligations Applies Only to the States and Is Not a Limitation Upon the Power of Congress.

If Congress had the power to adopt this resolution under the Constitution, then it cannot be successfully contended

that the gold clause still must stand in order to prevent the impairment of the obligation of contracts.

In the recent case of New York v. United States, 257 U. S. 592, objection was made by the State of New York that an order increasing rates by the Interstate Commerce Commission would impair the obligation of the charter and contract with the state. Chief Justice Taft delivered the opinion for the Court and, in denying this contention, said:

> "The next objection is that the state has a charter contract with the New York Central Railroad Company by which the latter is bound not to charge more than two cents a mile for passenger carriage between Albany and Buffalo, and that, if the Transportation Act permits the Interstate Commerce Commission by such an order to enable the railroad company to violate its contract, it impairs the obligations of the contract in violation of Section 10, Article I of the Federal Constitution. That section provides that 'no **state** shall * * * pass any * * * law impairing the obligation of contracts,' **and does not in terms restrict Congress or the United States.** But it is said that it deprives New York and her people of property without due process of law. As said in Addyston Pipe & Steel Co. v. United States, 175 U. S. 211, 230: 'Anything which directly obstructs and thus regulates that commerce which is carried on among the states, whether it is state legislation or private contracts between individuals or corporations, should be subject to the power of Congress in the regulation of that commerce' " (citing L. & N. R. R. Co. v. Motley, 219 U. S. 467; New York v. U. S., 257 U. S. 601).

In L. & N. Co. v. Motley, 219 U. S. 467, for a valuable consideration, a contract had been made by the Louisville & Nashville Railroad to issue free transportation to the plaintiff Motley. In 1906, many years after this contract had been executed, Congress passed an act granting to the Interstate Commerce Commission power to regulate commerce between the states by railroad, and interdicted the use of "free transportation." The railroad company refused longer to comply with the contract, and in holding that the same was void after the act of Congress the Supreme Court, in an opinion by Mr. Justice Harlan, said:

> "The Court cannot add an exception based on equitable grounds when Congress forbids to make such an exception. * * * There is no provision excepting special contracts from the operation of the law. * * * The power of Congress over interstate transportation embraces all manner of carriage of that character—whether gratuitous or otherwise—and, in the absence of express exceptions, we think it was the intention of Congress to prevent a departure from the published rates and schedules in any manner whatsoever. * * * We now come to the question whether, assuming that the agreement of 1871 was valid when made, could Congress, by any statute subsequently enacted, make its enforcement by suit impossible? There are certain propositions at the base of this inquiry which we need not discuss at large, because they have become thoroughly established in our constitutional jurisprudence. One is, that the power granted to Congress to regulate commerce among the states and with foreign nations is complete in itself, and is unrestricted ex-

> cept by the limitations upon its authority to be found in the Constitution. * * * Long before the above cases were decided, it was said in Knox v. Lee, 12 Wall. 457, 551, that 'as in a state of civil society property of a citizen or subject is ownership, subject to the lawful demands of the sovereign, so contracts must be understood as made in reference to the possible exercise of the rightful authority of the Government, and no obligation of a contract can extend to the defeat of legitimate government authority."
>
> L. & N. v. Motley, 219 U. S. 480, 482.

The recent case of Home B. & L. Assn. v. Blaisdell, 78 Sup. Ct. Rep. 255, recognizes the grave emergency confronting the country to the extent necessary under the reserved police power of the state to justify setting aside contracts inimical to the public interest as applicable to states. In the decision in this case, that involved the validity of the Minnesota Mortgage Moratorium Law, which it was claimed violated Section 10, Article I of the Federal Constitution, the Supreme Court, speaking through Mr. Chief Justice Hughes, said:

> "It does not matter that legislation appropriate to a legitimate end has the result of modifying or abrogating contracts already in effect, as contracts are to be regarded as having been made subject to the future exercise of the constitutional power of the state, and the reservation of essential attributes of sovereign power is read into contracts as a postulate of the legal order."

Further on the Court said:

> "The economic interest of the state may justify the exercise of its protective power, notwithstanding interference with existing contracts."

And the Supreme Court in the Blaisdell case expressly decided that:

> "Whether legislation designed to relieve an economic emergency is wise or unwise, as a matter of policy, is a question with which the Court is not concerned."

In the course of the opinion in the Blaisdell case the Chief Justice further said:

> "The economic interests of the state may justify the exercise of its continuing and dominant protective power notwithstanding interference with contracts. In Manigault v. Springs, 199 U. S. 473, 50 L. ed. 274, 26 S. Ct. 127, riparian owners in South Carolina had made a contract for a clear passage through a creek by the removal of existing obstructions. Later, the Legislature of the state, by virtue of its broad authority to make public improvements, and in order to increase the taxable value of the lowlands which would be drained, authorized the construction of a dam across the creek. The Court sustained the statute upon the ground that the private interests were subservient to the public right. The Court said (id., p. 480): 'It is the settled law of this Court that the interdiction of statutes impairing the

obligation of contracts does not prevent the state from exercising such powers as are vested in it for the promotion of the common weal, or are necessary for the general good of the public, though contracts previously entered into between individuals may thereby be affected. This power, which in its various ramifications is known as a police power, is an exercise of the sovereign right of the government to protect the lives, health, morals, comfort and general welfare of the people, and is paramount to any rights under contracts between individuals.' * * * It is manifest from this review of our decision that there has been a growing appreciation of public needs and of the necessity of finding ground for a rational compromise between individual rights and public welfare. The settlement and consequent contraction of the public domain, the pressure of a constantly increasing density of population, the interrelation of the activities of our people and the complexity of our economic interests have inevitably led to an increased use of the organization of society in order to protect the very basis of individual opportunity. Where, in earlier days, it was thought that only the concerns of individuals or of classes were involved, and that those of the state itself were touched only remotely, it has later been found that the fundamental interests of the state are directly affected, and that the question is no longer merely that of one party to a contract as against another, but of the use of reasonable means to safeguard the economic structure upon which the good of all depends. * * * The legislation was addressed to a legitimate end, that is, the legislation was not for the mere advantage of particular individuals, but for the protection of a basic interest of society."

Hence, since Congress had the power, under the Constitution, to adopt Public Resolution No. 10 of June 5, 1933, it cannot successfully be contended that the gold clause in the Debtor's bonds must stand in order to prevent the impairment of a contract obligation.

V.

Whether Malum in Se or Malum Prohibitum, Any Illegal Contract Can Furnish No Basis for a Legal Remedy.

There is no distinction in law between the contract which contravenes public morals and one which is prohibited by law. In either event, the contract is illegal and there can be no legal remedy for that which is itself illegal.

Re Forsythe, 11 Wall. 484;
Bank of United States v. Owens, 2 Pet. 527;
Thomas v. Richmond, 12 Wall. 349.

In

Sage v. Hampe, 235 U. S. 99,

this Court held that, where a contract was entered into which directly tended to bring about results that the law seeks to prevent, said contract cannot be made the ground of a successful suit, since the courts will not lend their assistance in any way toward carrying out the terms of a contract which is forbidden by law.

Sage v. Hampe, 235 U. S. 99;
McMullen v. Hoffman, 174 U. S. 639.

If the contract has a tendency to endanger the public interests or injuriously affect the public good, then it should never receive the sanction of a court of justice, nor can it be made the foundation for its judgment.

Ritter v. Mutual Life Insurance Co., 169 U. S. 139;
Continental Wall Paper Co. v. Voight Company, 212 U. S. 227.

The Courts recognize no distinction between contracts malum in se and malum prohibitum, and in both classes of such prohibited contracts, since there can be no civil right where there is no legal remedy, there is no legal remedy for that which is itself illegal or in violation of a constitutional statute.

Gibbs v. Gas Co., 130 U. S. 396;
Ewell v. Daggs, 108 U. S. 143.

No contract can be enforced in the courts of the United States where it was made in violation of the laws of the United States or is in contravention of public policy.

Kennett v. Chambers, 14 How. 38.

VI.

Decisions of the Permanent Court of International Justice and of the House of Lords, Relied Upon by the Appellants, Are Not in Point in This Case.

The decisions of the Permanent Court of International Justice involving the validity of the Serbian bonds where

under the law the gold clause of said bonds was not invalid, and the decision of the House of Lords in Great Britain in the case of **Feist**, appellant, involving the construction of a gold clause in bonds issued by a Belgian corporation, are not in point in this case for the reason that in neither of those cases was there involved the validity of an Act of Parliament or of a sovereign government, such as the Act of Congress, which strikes down the gold clause of the contract relied on by the Trustees in this case.

The reasoning of the House of Lords that "the gold clause was the means by which the amount of that indebtedness is to be measured and ascertained" could not be controlling in this case, for the reason that the resolution of Congress makes void any obligation which requires payment "in gold or a particular kind of coin or currency, **or in an amount in money of the United States measured thereby.**"

VII.

Bondholders Are Not Entitled to Recover in Current Funds the Value at the Time of Judgment in Gold Dollars Stipulated for in the Bonds.

That the bondholders of the Debtor's Iron Mountain mortgage are entitled to recover in current funds the value at the time of the judgment of the gold dollars agreed to be paid in the bond would strike down the resolution of Congress of June 5, 1933. If such a resolution was a constitutional exercise of power by Congress, the

bondholders are not entitled to recover the equivalent in current funds of the gold dollars specified for in their bonds. The impossibility of performance since the resolution by the federal legislature is a complete impediment to the recovery by the bondholders in this case of the equivalent of the gold dollars specified in their bonds in current funds. Nor does the fact that they cannot recover result in impairment of the contract, for the reason that the contract was made in view of the legal conditions which Congress might subsequently write into the contract. Speaking of legal prohibitions as preventing performance of contracts, the law is thus stated in Ruling Case Law:

> "One of the conditions implied in a contract is that the promisor shall not be compelled to perform if performance is rendered impossible by an act of the law. The inference is that the parties did not contemplate that damages should be paid for nonperformance in the event that performance was subsequently prohibited by law. The decisions of practically all jurisdictions are to the effect that where a contract, legal in its inception, becomes illegal by subsequent statutory enactment, the contract is wholly terminated as soon as the statute takes effect, even though the time specified for its performance has not yet fully expired, and no action can be maintained by either party for failure to perform the obligations of the contract after the illegality has attached."
>
> 6 R. C. L., Sec. 366, p. 1000.

VIII.

Bronson v. Rodes Distinguished.

The principal case relied upon by counsel for appellants is Bronson v. Rodes (7 Wallace 229), holding that where contracts were made payable in coin, judgment must be entered for coin dollars.

Upon the point now before the Court we do not think it can be successfully denied that Bronson v. Rodes was overruled by the decision of the Supreme Court in the Legal Tender Cases.

Knox v. Lee, 12 Wallace 457.

In **Thompson v. Butler,** 95 U. S. 694 (1877), the Court overruled any inference that might be drawn from the dictum in **Bronson v. Rodes,** supra, that a contract payable in a particular kind of money was "a commodity contract," by saying (at pp. 696-697):

> "One owing a debt may pay it in gold coin or legal tender notes of the United States, as he chooses, unless there is something to the contrary in the obligation out of which the debt arises. A coin dollar is worth no more for the purposes of tender in payment of an ordinary debt than a note dollar. The law has not made the note a standard of value any more than coin. * * * We are aware that in **Bronson v. Rodes,** 7 Wall. 229, it was said that a contract to pay in gold or silver coin 'is, in legal import, nothing else than an agreement to deliver a certain weight of

> standard gold, to be ascertained by a count of coins,' and that 'it is not distinguishable, * * * in principle, from a contract to deliver an equal weight of bullion of equal fineness'; **but, notwithstanding this, it is a contract to pay money, and none the less so because it designates for payment one of the two kinds of money which the law has made a legal tender in discharge of money obligations.''**

As said by the District Court in its opinion in the Kercheval case (decided February 24, 1934):

> "A great majority of the state cases disagreed with the doctrine of Bronson v. Rodes, Missouri among the latter" (citing Henderson v. McPike, 35 Mo. 255; Appel v. Waltman, 38 Mo. 194).

In Maryland v. B. & O. (22 Wallace 105) the state claimed the right to be paid in gold because the language used implied an undertaking to pay in coin. And the Court held that no such contract would be presumed to apply from the language used. The difference between that case and this is that here the contract was expressly made payable in gold, which Congress has since declared to be against public policy.

As said by Judge Faris in his opinion, adjudging the gold clause of these bonds void:

> "The gold clause here vexing is not a promise to pay these bonds in gold as money. It is a promise to pay in gold, not as money, but as a mere commodity;

the bulk whereof, or the quantity of gold to be paid, to be equal to the gold content of one thousand dollars of gold coin of the United States of the standard of weight and fineness as of May 1, 1903. * * * In short, it is a mere agreement of barter, or swapping of commodities.

* * * * * * *

"Can it be doubted that Congress had the right to say to those who had made contracts, the effect of which was to forestall and circumvent the Congress itself that, having usurped a power belonging to the Congress, they must give it back, because the exercise of it by a few willful men would vastly harm this country? * * * It cannot, of course, be doubted that if payment be decreed to be made in the paper money equivalent of gold, the power of the Congress in the premises will be just as effectually thwarted and nullified as if payment in gold were decreed." (Opinion, Judge Faris; Tr. Rec., p. 123.)

As applied to the facts and the law governing this case, this logic is unanswerable.

The cogent reasoning in the opinion of Judge Charles B. Faris, the United States District Judge who decided this case, is the most persuasive argument that can be advanced, and trustees for the Debtor are willing to submit the issue in this court wholly upon Judge Faris' opinion.

In conclusion, there is no distinction in the cases between contracts interdicted because they are morally wrong or malum in se, or prohibited by law. In both cases, the

contracts are void and cannot furnish the basis for a legal cause of action. Certainly the presumption should obtain that, following the closing of all the banks in the country and the general conditions existing on March 4, 1933, Congress was actuated by the best of motives to conserve the interests of the people of the United States. In clear and unmistakable terms Congress has denounced all such contracts, past or future, as those relied upon by the trustees in the Debtor's Iron Mountain mortgage. In this legislation, Congress was proceeding under its exclusive constitutional power, and to conserve "the general welfare" of the people of the United States; therefore the gold clause of the bonds in question is not legally enforcible in the courts of this country.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1934

NOS. 471 AND 472

UNITED STATES OF AMERICA, RECONSTRUCTION Finance Corporation, et al., petitioners

v.

BANKERS TRUST COMPANY AND WILLIAM H. BIXBY, trustees

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES AND THE RECONSTRUCTION FINANCE CORPORATION

OPINION BELOW

The opinion of the District Court (R. 109) is reported in 7 F. Supp. 1.

JURISDICTION

The decree of the District Court was entered July 6, 1934. (R. 131.) Separate appeals were allowed by the District Court on July 28, 1934, and by the Circuit Court of Appeals on July 30, 1934.

(R. 137, 254.) On October 17, 1934, prior to hearing or submission of these appeals in the Circuit Court of Appeals, a petition for a writ of certiorari was filed in this Court, and was granted on November 5, 1934. The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and upon Section 8 (b) of that Act.

QUESTION PRESENTED

Whether the Joint Resolution of Congress of June 5, 1933, is valid; and whether, in consequence thereof and of the Executive Orders and Regulations relating to the holding and transfer of gold and foreign exchange transactions therein, and the Gold Reserve Act of 1934 (all set out in a separate Appendix), mortgage bonds issued in 1903, maturing May 1, 1933, and containing a so-called gold clause, are dischargeable as to principal and interest at their face amount, dollar for dollar, in any lawful money of the United States, where the debtor and its properties are being administered in reorganization proceedings brought on March 31, 1933, under Section 77 of the Bankruptcy Act, as amended, c. 204, 47 Stat. 1467, 1474.

Similar, but not identical, questions are presented in the cases of *Nortz* v. *United States*, No. 531, and *Perry* v. *United States*, No. 532, in which separate briefs will be filed, but all of them involve essentially the sovereign power of the United States to deal with or the authority of the Congress to

legislate in respect of coinage and currency, to declare what shall be legal tender for all debts and to annul any contractual provision which either rejects such legal tender or accepts it at a measured discount.

STATUTES AND ORDERS INVOLVED

The pertinent statutes and orders involved are set forth in a separate Appendix.

STATEMENT

On March 31, 1933, the Missouri Pacific Railroad Company filed a petition in bankruptcy under Section 77 of the Bankruptcy Act, as amended (R. 3). The petition was allowed by the District Court on the same day (R. 5). Both the petitioners and the respondents became parties to this cause by petitions for leave to intervene, duly allowed, in the District Court (R. 52, 60, 70, 71). The respondents are trustees under the St. Louis Iron Mountain and Southern Railway Company River and Gulf Divisions first mortgage, dated May 1, 1903, which includes properties purchased by the Missouri Pacific, subject to the mortgage, at judicial sale in 1917 (R. 8). The Reconstruction Finance Corporation is a creditor of the railroad in the aggregate principal amount of $23,134,800, holding as collateral security for its claim bonds which are junior to those secured by the above-mentioned mortgage (R. 61). The United States is the sole stockholder of the Reconstruction Finance Corporation and is further interested by virtue of a claim

against the railroad for unpaid taxes amounting to approximately $5,000,000 (R. 82). The United States sought leave to intervene, by direction of the Attorney General, both because of its pecuniary claim and the paramount public interest (R. 67, 82).

On December 27, 1933, the respondents, as Trustees of the Iron Mountain mortgage, filed a petition in the District Court asking that the lien of the mortgage be determined to be in the sum of $34,548,000, with interest thereon, and that such sum and interest be determined to be payable in gold coin of the United States of the standard and [*sic*] weight and fineness prevailing on May 1, 1933 (R. 58). The respondents further requested in their petition that the court determine that any sums of money paid to them as trustees otherwise than in gold coin on account of any obligations payable in gold coin should be accepted by them at the "market value of such sums of money in such gold coin at the times of such payments" (R. 58–59). The mortgage, dated as of May 1, 1903, contains a covenant to pay principal and interest of the bonds issued thereunder and secured thereby "in gold coin of the United States of America of or equal to the present standard of weight and fineness" (R. 186). Both the coupon and registered bonds contain a promise to pay "One Thousand Dollars gold coin of the United States of the present standard of weight and fineness" and interest thereon "in like gold coin" (R. 157, 159, 235). On

April 9, 1934, the Reconstruction Finance Corporation filed an answer to the petition of the respondents, setting out the Emergency Banking Act of March 9, 1933, the Emergency Farm Mortgage Act of May 12, 1933, the Proclamations and Orders pursuant thereto, the Joint Resolution of June 5, 1933, and the Gold Reserve Act of January 30, 1934, and asking that the court determine without delay that the debt alleged to be owing on account of the principal of the bonds and the interest then or thereafter due, secured by the Iron Mountain mortgage, could be satisfied by payment of the face amount of such debt in lawful money of the United States (R. 73–76).

The United States of America and the trustees of the debtor filed substantially similar answers (R. 77–81, 91–96). The District Court, on May 22, 1934, denied a motion of the respondents to amend their petition without prejudice (R. 101); and, after oral argument and the filing of printed briefs, entered a decree, on July 6, 1934 (R. 131), adjudging that the respondents, as trustees, are entitled to payment of $1000 upon each bond in the principal amount of $1000, validly issued and outstanding, secured by the Iron Mountain mortgage, in such lawful money of the United States as is legal tender for the payment of debts, with interest thereon, also in such lawful money of the United States; and that any amounts payable to the respondents as trustees shall be paid in such lawful money of the United States as is legal tender for

debts and shall be accepted by them at the nominal value thereof, in discharge, dollar for dollar, of the face amount of the indebtedness, including interest, to which it may be applied (R. 133–4).

Two separate appeals were taken by the respondents from the decree of the District Court, one under Section 24(a) and the other under Section 24(b) of the Bankruptcy Act, as amended. Both were allowed (R. 137, 254); and, there was only one record on appeal.

The respondents assigned as error the holding of the District Court that the gold clause resolution of June 5, 1933, is constitutional, and the failure of the court to hold that the obligees are entitled under the bonds to gold coin of the United States of the standard of weight and fineness on May 1, 1903, or to the equivalent thereof, determined for each $1000 in gold coin by multiplying 1000 by 25.8 and dividing the same by 15–5/21 (R. 135–6, 252–3).

This Court granted certiorari on November 5, 1934 (R. 262).

SUMMARY OF ARGUMENT

I

Public Resolution No. 10 of the 73d Congress, approved June 5, 1933, declares that gold clauses are contrary to public policy and provides that obligations payable in money of the United States, whether or not such clauses are contained therein, may be discharged by payment, dollar for dollar,

in any coin or currency which at the time of payment is legal tender for public and private debts. The Resolution is constitutional and is controlling in the case at bar.

There were compelling reasons for the recognition and declaration by the Congress that gold clauses are contrary to public policy. Whatever justification may have existed for such clauses under the dual monetary system which prevailed during and following the Civil War, and which entailed the circulation of two kinds of money given and taken in exchange at differing values and receivable for different payments, the justification was ended by our departure from that system. Gold clauses are inconsistent with the present policy of the Congress to maintain at all times the equal power of every dollar in the markets and in the payment of debts, and to accord equal legal tender qualities to all forms of money in the payment of governmental and other kinds of debt.

Not only are gold clauses inconsistent with this declared policy of the Congress, but they constitute a serious obstruction to the effective exercise by the Congress of its monetary and other powers. Their effect, if enforced, is of such serious consequence as substantially to deprive the Congress of the power to regulate the value of the dollar. Gold clauses would, if enforced, interfere with recent monetary measures adopted to protect the gold reserves of the United States, to provide a more effective use of those reserves, and to regulate and pro-

tect the foreign commerce of the United States. These monetary measures were necessary, in the judgment of the Congress, to cope with the disorganized financial and economic conditions which arose out of the World War and reached their crisis in the United States in 1933. Only by declaring that gold clauses should not be enforceable was the Congress able to take the steps required to meet these conditions. The amount of existing gold clause obligations generally estimated at about $100,000,000,000, made it essential that these as well as future issues be subject to the Resolution.

The recent monetary legislation, of which the Joint Resolution is the keystone, was clearly embraced within the delegated and sovereign powers of the Congress. Substantially similar measures have frequently been taken in the past pursuant to the power to coin money and regulate the value thereof; to assure, in accordance therewith, a uniform value to the coins and currency of the United States; to borrow money on the credit of the United States; and to regulate foreign and interstate commerce and exercise a measure of control over international relations. The provisions of the Resolution do not violate any constitutional limitations placed upon the Congress. Objections under the due process clause are answered by the fact that the Resolution was an appropriate and, in the judgment of an impressive majority of the Congress, a necessary means of assuring the effective exercise by the Congress of its delegated and sovereign powers. Ex-

isting contracts will not, as this Court has frequently declared, be allowed to obstruct a legitimate policy of the Congress.

The Resolution is controlling in the case at bar. It applies to all undischarged obligations to pay money of the United States. Although the bonds in the present case bear a maturity date of May 1, 1933, they continued to exist as undischarged obligations according to their terms and are therefore subject to the provisions of the Resolution.

II

Independently of the Joint Resolution, the claim of the respondents must be limited to the face amount of the debt, in consequence of the proclamations, orders and regulations concerning the hoarding, acquisition and export of gold coin and gold. We believe that the gold clause in the case at bar constitutes a single obligation to pay in gold coin, and does not contain an alternative promise to pay some asserted equivalent to the value of that coin. The obligation to pay in gold coin would then be excused in an action on the bonds, because of supervening illegality and impossibility; and recovery could be had, on principles of partial enforcement or of quasi-contractual restitution, for only the face amount of the debt. Even if gold coin had been paid at the due date, the bondholders could not have realized upon such coin more than the face amount thereof in lawful money, nor could they have used such coin to greater advantage in

the purchase of goods or the payments of debts. If the Court should be of opinion, however, that the gold clause contains an implied promise to pay an amount equivalent in value to the goin coin stipulated, the result is the same. At no time since May 1, 1933, has the value of goin coin to a gold clause creditor been greater than its face amount in lawful money; and on May 1, 1933, when the bonds became due, gold coin was of no greater value in this country to anyone, regardless of how it was acquired or how its value was measured.

III

Broader ground is also taken, namely, that power over coinage and currency is an attribute of sovereignty, that the United States is a sovereign nation, as frequently decided by this Court, and that the legislation and orders here involved should be supported as an exercise of this sovereign or plenary power by the Congress, to which it is committed in our system of Government, without let or hindrance by private contracts.

ARGUMENT

I

Public Resolution No. 10, approved June 5, 1933, is constitutional and controlling in the case at bar

1. Introductory

At the outset of a consideration of the constitutionality of the Resolution, the issues may be delimited by recalling two principles frequently enunciated by this Court.

The first of these principles is that an Act of the legislature is presumed to be constitutional in the absence of a factual foundation of record for overthrowing it, and that the burden is upon those attacking the law to demonstrate its unconstitutionality by clear and convincing proof. This Court said, in the *Legal Tender Cases* (12 Wall. 457, 531):

> A decent respect for a co-ordinate branch of the government demands that the judiciary should presume, until the contrary is clearly shown, that there has been no trangression of power by Congress—all the members of which act under the obligation of an oath of fidelity to the Constitution. Such has always been the rule. In *Commonwealth* v. *Smith* (4 Binney 123), the language of the court was, "It must be remembered, however, that for weighty reasons, it has been assumed as a principle in construing constitutions, by the Supreme Court of the United States, by this court, and by every other court of reputation in the United States, that an act of the legislature is not to be declared void, unless the violation of the Constitution is so manifest as to leave no room for reasonable doubt;" * * *

This principle, established in the early history of Supreme Court litigation, has received numerous applications by this Court within the past few years.

Sinking Fund Cases, 99 U. S. 700, 718; *Close* v. *Glenwood Cemetery*, 107 U. S. 466, 475; *Powell* v.

Pennsylvania, 127 U. S. 678, 685; *Buttfield* v. *Stranahan,* 192 U. S. 470, 492; *Lindsley* v. *National Carbonic Gas Co.,* 220 U. S. 61, 79, 83; *Chicago Dock & Canal Co.* v. *Fraley,* 228 U. S. 680, 687; *Rast* v. *Van Deman & Lewis Co.,* 240 U. S. 342, 357; *James Everard's Breweries* v. *Day,* 265 U. S. 545, 560; *Wampler* v. *Lecompte,* 282 U. S. 172; *O'Gorman & Young* v. *Hartford Fire Insurance Co.,* 282 U. S. 251; *Railway Express Agency* v. *Virginia,* 282 U. S. 440, 444; *Hardware Dealers Mutual Fire Ins. Co.* v. *Glidden Co.,* 284 U. S. 151, 158; *Boston & Maine R. R.* v. *Armburg,* 285 U. S. 234, 240; *Lawrence* v. *State Tax Commission,* 286 U. S. 276, 283; and *Williams* v. *Baltimore,* 289 U. S. 36, 42.

Of these cases, which are merely representative and not exhaustive, the last seven were decided since 1930.

The second principle is that in choosing the means to carry out the powers granted by the Constitution, the Congress has an extremely wide discretion, and its judgment will not be overturned unless clearly arbitrary or capricious. *McCulloch v. Maryland,* 4 Wheat. 315, 418; *United States* v. *Fisher,* 2 Cranch 358; *Legal Tender Cases,* 12 Wall. 457; *Farmers' and Mechanics' National Bank* v. *Dearing,* 91 U. S. 29, 33; *Juilliard* v. *Greenman,* 110 U. S. 421; *Ex parte Curtis,* 106 U. S. 371; *Northern Securities Co.* v. *United States,* 193 U. S. 197; *Ling Su Fan* v. *United States,* 218 U. S. 302; and *Board of Trustees of University of Illinois* v. *United States,* 289 U. S. 48.

In short, those attacking the Joint Resolution must prove that there is clearly no reasonable relation between that Act and the powers granted to Congress in the Constitution, or that the Act falls within a specific prohibition of the Constitution. We shall show that, so far from being arbitrary or capricious, the discretion of the Congress in enacting the Joint Resolution was exercised in a way which has been considered by broad and informed opinion to be indispensable to the proper and effective exercise by the Congress of its monetary and other powers.[1]

The Gold Clause

The phrase "gold clause" is used in common parlance to refer to any one of a number of provisions calling for a particular kind of payment. The most common type is that used in the bonds in

[1] The question of constitutionality is not affected by the decision of the House of Lords, rendered on December 15, 1933, in *Feist* v. *Société Intercommunale Belge d'Electricité*, 1934 A. C. 161, nor by the decisions of the Permanent Court of International Justice in the cases of the Serbian and Brazilian bonds, P. C. I. J., Series A–Nos. 20–21. The decisions in those cases turned entirely upon the meaning to be given to the gold clause in the absence of any statutes intended to abrogate such clauses. Those cases will be considered in connection with the defense of impossibility, pages 120–123, *infra*, where the proper interpretation of the gold clause is important.

the case at bar, calling for payment of "One Thousand Dollars in gold coin of the United States of the present standard of weight and fineness" and interest thereon "in like gold coin."[2] A second type of gold clause, referred to more accurately as a "gold value clause", calls for payment in gold coin of a particular standard of weight and fineness or in an amount in money measured thereby. A third type, more common in the middle part of the last century, calls for payment in gold coin without attempting to define its weight and fineness. This was the "gold clause" in the case of *Bronson* v. *Rodes,* 7 Wall. 229, discussed below.[3]

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[2] The gold clause in all Federal bonds issued between September 24, 1917, and June 5, 1933, was of this type. The authorizing statute provided: "The principal and interest thereof shall be payable in United States gold coin of the present standard of value." Act of Sept. 24, 1917, c. 56, 40 Stat. 288.

[3] This was also the "gold clause" for the Federal interest-bearing obligations during the period of depreciated "greenbacks" and eventually for the "greenbacks" themselves. (12 Stat. 709; 13 Stat. 13). An Act of March 18, 1869, c. 1, 16 Stat. 1 (R. S. 3693), provided: "The faith of the United States is solemnly pledged to the payment in coin or its equivalent of all the obligations of the United States not bearing interest, known as United States notes, and of all the interest-bearing obligations of the United States, except in cases where the law authorizing the issue of any such obligations has expressly provided that the same may be paid in lawful money or other currency than gold and silver. But none of the interest-bearing obligations not already due shall be redeemed or paid before maturity unless at such time United States notes are convertible into coin at the option of the holder, or unless at such time bonds of the United States bearing a lower rate of interest than the bonds to be redeemed can be sold at par in coin."

In considering the constitutionality of the Joint Resolution of June 5, 1933, which declares gold clauses to be against public policy and unenforceable we shall use the phrase "gold clause", as does the Resolution, as referring to "every provision contained in or made with respect to any obligation [payable in money of the United States] which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency or in an amount in money of the United States measured thereby * * *." As so used "gold clause" denotes provisions calling for payment in equivalents to gold or gold coin as well as the single provision to pay a stated amount of gold or a stated number of gold coins, whether or not the weight and fineness is specified. We shall show that the Resolution was an appropriate measure for carrying into execution the powers of the Congress, to whatever type of gold clause the Resolution may be applied. It should be borne in mind, however, that the bonds in the case at bar call for payment in gold coin and not in an amount of currency measured by its value. The question of the meaning of the clause is discussed, *infra,* pages 114 to 123, in connection with the effect of the clause apart from the Joint Resolution. If the clause is, as we shall there contend, a single obligation to pay in gold coin, those attacking the Resolution must show that it is unconstitutional insofar as it annuls provisions calling for such payment, whether or not it would be unconsti-

tutional in annulling provisions calling for payment in currency measured by the value of gold. Those who would strike down a statute must show not only that they are affected by it, but that as *applied to them* it exceeds the power of the legislature.[4]

The importance of the gold clause is due to the overwhelming amount of obligations calling for payment in gold coin of the old standard (or an amount in other money measured thereby) issued and outstanding at the time of the passage of the Joint Resolution of June 5, 1933. The best estimates place the amount of such gold-clause obligations at approximately $100,000,000,000. This figure, which includes public obligations of an estimated amount of about $25,00,000,000, was given in Congress by almost all who discussed the Joint Resolution. Congressman Steagall, Chairman of the Committee on Banking and Currency which reported the bill, stated on the floor that the amount involved was over $100,000,000,000. 77 Cong. Rec., Part 5, page 4531.[5] Congressman Luce, who pre-

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[4] *Austin* v. *Aldermen of Boston*, 7 Wall. 694; *Supervisors* v. *Stanley*, 105 U. S. 305, 314; *Standard Stock Food Co.* v. *Wright*, 225 U. S. 540, 550; *Darnell* v. *Indiana*, 226 U. S. 390, 398; *Roberts & Schaefer Co.* v. *Emmerson*, 271 U. S. 50, 54, 55; and *Liberty Warehouse Co.* v. *Burley Tobacco Growers' Co-Op. Marketing Ass'n*, 276 U. S. 71, 88.

[5] Others who estimated the amount at $100,000,000,000 were Congressman Parsons (*Idem*, page 4520), Congressman Busby (*Idem*, page 4523), Congressman Greenwood (*Idem*, page 4526), Congressman Gray (*Idem*, page 4545), and Senator Borah (*Idem*, page 4905). Congressman

sented the minority views of the Committee, stated that the amount was $100,000,000,000 exclusive of Government securities. *Idem,* page 4534. The President estimated the amount at thirty billions in Government obligations and sixty or seventy billions in private bonds. In his radio address of May, 7, 1933, he said:

> In this connection it is worth while remembering that in the past the government has agreed to redeem nearly thirty billions of its debts and its currency in gold, and private corporations in this country have agreed to redeem another sixty or seventy billions of securities and mortgages in gold * * *.

The typical gold clause calls for payment of interest as well as principal in gold coin. If we take the conservative estimate of the principal amount of $75,000,000,000 of private obligations and assume an average interest charge of five per-cent, we find that the annual interest payable in gold coin in respect of private gold-clause obligations is $3,750,000,000. Assuming an average in-

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Goldsborough estimated the amount at $91,000,000,000, including Government obligations (*Idem*, page 4536). See also the estimate by Turner Catledge, *Gold-Bond Clause Awaits Court Test*, in New York Times, May 7, 1933, Sec. 8. He places the amount at $22,000,000,000 in public obligations and $75,000,000,000 in private obligations. The publication of the Twentieth Century Fund, *The Internal Debts of the United States*, page 253 refers to an estimate of $75,000,000,000 as the total amount of gold-clause obligations outstanding.

terest charge of four percent on the approximately $25,000,000,000 principal amount of public obligations, we find that the annual interest payable in gold coin in respect of such gold-clause obligations is $1,000,000,000.

2. There was a reasonable basis for Congressional determination that the gold clause is contrary to public policy, inconsistent with our present monetary system and an obstruction to the exercise by Congress of its monetary and other powers

The gold clause Resolution is the keystone of our recent fiscal legislation. Its constitutionality can not properly be determined without taking this fact into account. Adherence to gold clauses would have effectually deprived the Congress of the power to assure uniform value to all forms of money; to provide a more effective use of gold reserves, and thus to protect the stability of our currency; to borrow the large sums of money needed for a program of relief and reconstruction; and, finally, to adjust the value of the dollar, in order to relieve serious economic and financial maladjustments at home and to protect our foreign trade against the adverse effect of depreciated foreign currencies.

The title of the Resolution states that it is "To assure uniform value to the coins and currencies of the United States." The preamble recites that the existing emergency has disclosed that gold clauses obstruct the power of the Congress to regulate the value of the money of the United States and are inconsistent with the declared policy of the Congress to maintain at all times the equal power

of every dollar, coined or issued by the United States, in the markets and in the payments of debts. The gold clause is accordingly declared to be against public policy. The significance of this recital, and the reasonableness of the conclusion of the Congress, may be drawn from the following rapid review of the changes in our monetary system, particularly the more recent changes made in view of the financial and economic situation, national and international.

A. Justification of the gold clause was removed when the dual monetary system was ended by the parity provisions

(I) THE DUAL MONETARY SYSTEM

The gold clause had its origins in a period before it was determined that the dual monetary system should not be permitted to continue. The characteristic of this system was that two kinds of money were permitted to circulate, fluctuating in value one against the other. Until 1862 the circulating media consisted of United States coins on the one hand and the circulating notes of the state banks on the other. The Federal Government assumed no responsibility for the value of these notes; the Congress indeed "required the use of coin for all receipts and disbursements of the National government." *Bronson* v. *Rodes,* 7 Wall. 229, 246; 9 Stat. 64.

In 1862, with the passage of the first Legal Tender Act, the dual system was continued, to con-

sist thereafter on the one hand of the United States coins and "demand notes" of 1861–1862,[6] redeemable in coin; and on the other of the state bank notes and United States notes ("greenbacks"). This duality was recognized by the Congress in the Legal Tender Acts and in subsequent legislation. The Legal Tender Acts made greenbacks "legal tender in payment of all debts, public and private, within the United States, *except for duties on imports and interest*" "upon bonds and notes which shall be paid in coin." (Italics ours; c. 33, Sec. 1, 12 Stat. 345.) An Act of June 17, 1864 (c. 127, 13 Stat. 132), declared that thereafter loans of coin should not be made *unless made payable in coin.* An Act of March 10, 1866 (c. 15, 14 Stat. 4), required all returns of income to state whether made in legal-tender currency or in coin; and if in coin, the assessor was to increase the assessment to the equivalent income in paper. Thus, beginning in 1862, the Federal Government provided two kinds of money for two kinds of payments. These two kinds of Federal money also fluctuated in terms of each other. In January 1865, for example, "one dollar in coin was equivalent in market value to two dollars and a quarter in United States notes." (*Bronson* v. *Rodes,* 7 Wall. 229, 230.)

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[6] Act of July 17, 1861, c. 5, 12 Stat. 259; Act of August 5, 1861, c. 46, 12 Stat. 313; Act of February 12, 1862, c. 20, 12 Stat. 338; Act of March 17, 1862, c. 44, 12 Stat. 370.

(II) BRONSON v. RODES

It was during the existence of this dual monetary system that the Supreme Court decided the case of *Bronson* v. *Rodes, supra.* This case will receive attention here because it is the leading case on obligations payable in a particular kind of money. The decision in that case was that the Legal Tender Acts, properly construed, did not make "greenbacks" legal tender for obligations to pay coin. The Court recognized the implications of a system which permitted two kinds of lawful money, fluctuating against each other and available for different kinds of payments; and the reasoning leading to its construction of the Legal Tender Acts rested upon these characteristics of the dual monetary system. The Court developed this view as follows (7 Wall. 252, 254):

> The currency acts themselves provide for payments in coin. Duties on imports must be paid in coin, and interest on the public debt, in the absence of other express provisions, must also be paid in coin * * *.
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> * * * * *
>
> It seems to us clear beyond controversy that the act must receive the reasonable construction, not only warranted, but required by the comparison of its provisions with the provisions of other acts, and with each other; and that upon such reasonable construction it must be held to sustain the proposition that express contracts to pay coined dollars can

> only be satisfied by the payment of coined dollars. They are not "debts" which may be satisfied by the tender of United States notes.

Chief Justice Chase confirmed, in *Hepburn* v. *Griswold,* 8 Wall. 603, 609,[7] the extent to which the characteristics of a dual monetary system influenced the conclusion of the *Bronson* case "in holding that this word [debts], as used in the statute, does not include obligations created by express contracts for the payment of gold and silver, whether coined or in bullion". The Chief Justice, who delivered the opinion of the Court in both cases, stated (p. 609):

> This conclusion rested, however, mainly on the terms of the act, which not only allow but require payments in coin by or to the government, and may be fairly considered, independently of considerations belonging to the law of contracts for the delivery of specified articles, as sanctioning special private contracts for like payments; without which, indeed, the provisions relating to government payments could hardly have practical effect.[8] * * *

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[7] It is true that *Hepburn* v. *Griswold* was overruled by the *Legal Tender Cases*, 12 Wall. 457, insofar as the former held the Legal Tender Acts unconstitutional; but this reversal does not affect the authority of the opinion of Chief Justice Chase insofar as it discusses the rationale of *Bronson* v. *Rodes.*

[8] It should here be noted that the gold clause Resolution explicitly applies to obligations by and to the United States as well as to private obligations.

The Court in *Bronson* v. *Rodes, supra,* recognized the validity of a provision calling for the payment in a particular kind of money of the United States "if * * * no express provision to the contrary be found in the acts of Congress" (see following quotation). That this attitude was determined by the characteristics of the dual monetary system then existing is shown in the following extract from the opinion (pp. 251, 252):

> It follows that there were two descriptions of money in use at the time the tender under consideration was made, both authorized by law, and both made legal tender in payments. The statute denomination of both descriptions was dollars; but they were essentially unlike in nature. The coined dollar was, as we have said, a piece of gold or silver of a prescribed degree of purity, weighing a prescribed number of grains. The note dollar was a promise to pay a coined dollar; but it was not a promise to pay on demand nor at any fixed time, nor was it, in fact, convertible into a coined dollar. It was impossible, in the nature of things, that these two dollars should be the actual equivalents of each other, nor was there anything in the currency acts purporting to make them such. How far they were, at that time, from being actual equivalents has been already stated.
>
> If, then, no express provision to the contrary be found in the acts of Congress, it is a just if not a necessary inference, from the

> fact that both descriptions of money were issued by the same government, that contracts to pay in either were equally sanctioned by law. * * *

Bronson v. *Rodes* may be cited to show that at a time when the United States had a dual monetary system, a contract calling for payment in one kind of money was sanctioned by law in the absence of a contrary determination by the Congress. The reasons given by the Court for the decision have ceased to be operative, and therefore they cannot be regarded as controlling on the question of the validity of gold clauses under our present monetary system. A decision that a promise to pay in gold or silver coin is consistent with the dual monetary system existing at the time of *Bronson* v. *Rodes* is not a decision that a promise to pay in gold coin of a particular standard of weight and fineness is consistent with or valid under a system which has abandoned the dual monetary hypothesis. Still less is it a decision that the Congress lacks constitutional authority to declare gold clauses against public policy or to make currency legal tender for gold coin obligations.

(III) THE PARITY PROVISIONS

The dual monetary system, particularly as it existed in the late 60's and 70's with its disastrous consequences to an orderly economy, ceased to have practical significance after the resumption of specie payments in 1879. Four times since then

the Congress has declared it to be the policy of this country to avoid the evils of two forms of money fluctuating one against the other.

In 1893, the Congress declared it to be the policy of the United States "to continue the use of both gold and silver as standard money", to be protected by "such safeguards of legislation as will insure the maintenance of the parity in value of the coins of the two metals, and the equal power of every dollar at all times in the markets and in the payment of debts." (Act of November 1, 1893, c. 8, 28 Stat. 4.)

In 1900, the Congress declared "that the dollar consisting of twenty-five and eight-tenths grains of gold nine-tenths fine * * * shall be the standard unit of value, and all forms of money issued or coined by the United States shall be maintained at a parity of value with this standard, and it shall be the duty of the Secretary of the Treasury to maintain such parity." (Act of March 14, 1900, c. 41, 31 Stat. 45.)

In 1913, the Congress was careful to provide in the Federal Reserve Act that "nothing in this Act contained shall be construed to repeal the parity provision or provisions contained in an Act approved March 14, 1900 * * * and the Secretary of the Treasury may for the purpose of maintaining such parity and to strengthen the gold reserve, borrow gold on the security of United States bonds * * *." (Federal Reserve Act of December 23, 1913, c. 6, Sec. 26, 38 Stat. 251, 274.)

In 1933, shortly before the gold clause Resolution was adopted, the Congress took the culminating step in assuring that the dual monetary system should not return, by making all coins and currencies of the United States full legal tender for all debts, public and private. At the same time the Congress reaffirmed the former parity provisions by declaring that should the standard unit of value be changed by reduction in the weight of the gold dollar "all forms of money issued or coined by the United States shall be maintained at a parity with this standard and it shall be the duty of the Secretary of the Treasury to maintain such parity * * *." (Act of May 12, 1933, c. 25, Sec. 43 (b) (2), 48 Stat. 31, 53.)

With the adoption of the principle that all coins and currencies of the United States should be equal, the gold clause lost the significance and the justification which it had earlier possessed. The parity and legal tender provisions of the Act of May 12, 1933, may have been sufficient, as a matter of law, to render gold clauses unenforceable, but the Joint Resolution was intended to clarify the effect of the Act in that regard. This relation between the two enactments was explained in a Treasury memorandum issued on May 26, 1933:

> A joint resolution was introduced today in both Houses of Congress designed to clarify the effect of recent legislation upon the

status of the "gold clause" in public and private obligations. This resolution has the support of the administration.

Since March 6, when the President declared a bank holiday, transactions involving payments in gold have been brought under control in order to protect and maintain the supply which constitutes a reserve for the Nation's currency. Gold is not now paid, nor is it available for payment, upon public or private debts.

Recently the Thomas Amendment to the Agricultural Relief Act has made all coins and currencies of the United States legal tender for the payment of every debt, public and private. Due, however, to the language used doubt has arisen whether obligations expressed to be payable in a particular kind of money, such as gold coin, may be satisfied by payment in other forms of legal tender.

While the Supreme Court of New York is reported to have held in a recent case that an obligation calling for payment in gold coin could be satisfied by payment of other lawful forms of money [*Irving Trust* v. *Hazlewood,* 148 Misc. 456.] confusion may be created if the existing legislation is differently construed in other jurisdictions. One of the purposes of the resolution is to remove any doubt and to avoid confusion, so that debtors and creditors may have a clear definition of their legal position.

Another purpose of the resolution is to make clear that future obligations, public and private, shall not contain the "gold clause." The Thomas Amendment did not contain specific provision to this effect. Such a provision is contained in the resolution.

The resolution makes it clear that all obligations past and future will be upon the same footing.

B. The gold clause is an obstruction to the exercise of the powers of Congress, as shown by its bearing upon recent legislation designed to cope with the monetary and financial crisis

(1) THE MONETARY AND FINANCIAL CRISIS

The extent to which gold clauses may fetter the Congress in the exercise of its powers is strikingly illustrated by the bearing of such clauses on the recent monetary legislation. Many of the measures enacted, as will be shown, could not have been adopted if gold clauses had not been denounced. But note should first be taken of certain monetary developments in other leading countries and of the outstanding features of our monetary and financial crisis, which called for the enactment of these measures.

Devaluation of Foreign Money Following the War.—In the beginning of 1933 the dollar, the

Swiss franc and the Dutch guilder were the only monetary units of the commercially important countries which were not devalued or depreciated substantially below the parities existing before the World War. The isolated position of the dollar among the units of value of the principal countries with which the United States trades or competes is shown on the following chart:

GOLD VALUE OF LEADING CURRENCIES

1932 Annual Average as Per Cent of Pre-War Parity With Gold

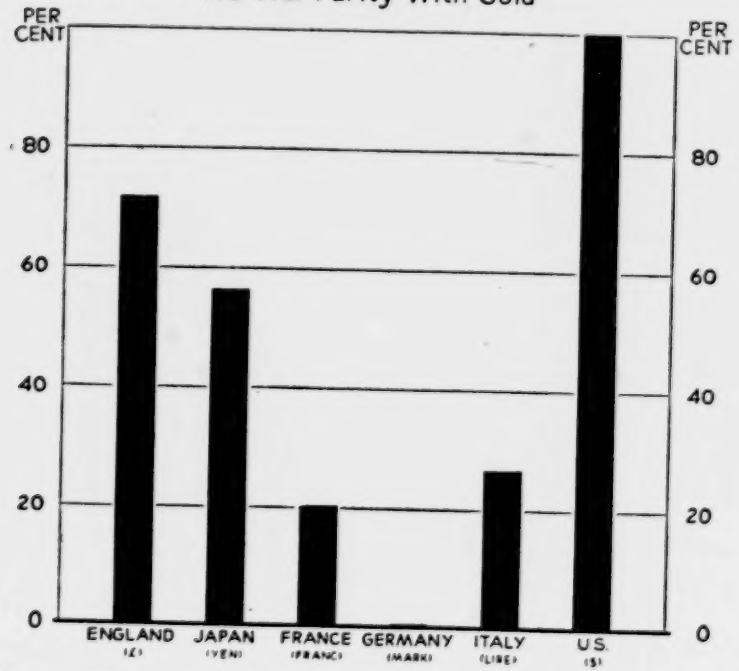

Chart prepared on basis of following table by Division of Statistics and Research, U. S. Treasury Department.

Gold Value of Leading Currencies

[1932 Annual Average as Percent of Pre-War Parity with Gold]

England	71.8
Japan	56.4
France	20.3
Germany	(*)
Italy	26.5
United States	100.0

Sources: *Monetary Units and Coinage Systems of the Principal Countries of the World*, United States Treasury Department, Bureau of the Mint, 1929, pp. 47, 49, 50, 51, 59, 60.

Monthly Bulletin of Statistics, League of Nations, October 1934, pp. 461–463.

Permanent Replacement of the Gold Coin Standard by the Gold Bullion Standard.—Following the outbreak of the World War, England, France, Switzerland, the Netherlands, Belgium and a number of other European countries, placed restrictions upon the export of gold and, in some instances, suspended the redemption of currency in gold coin. *Federal Reserve Bulletin*, August 1928, p. 547. Not one of these countries, upon resumption of the operation of the gold standard, resumed the redemption of its currency in gold coin. A number of the countries followed Great Britain in adopting a gold bullion standard, under which the central bank was obligated to redeem its notes only in bul-

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* By the Monetary Act of August 30, 1924, a new monetary unit called the reichsmark was established. While the reichsmark has the same gold content as the pre-war mark, the act creating the reichsmark provided for the replacement of the existing note circulation at the rate of one new reichsmark for 1,000,000,000,000 (one trillion) old marks. *Monetary Units and Coinage Systems of the Principal Countries of the World, Bureau of the Mint, Treasury Department* (1929), p. 49; D. T. Jack, *The Restoration of European Currencies* (1927), p. 105.

lion in amounts in excess of a specified minimum.[10] The redemption was more in the nature of a sale of gold at a fixed price, since a slight premium over the legal equivalent was charged. This method made for economy in the monetary use of gold by keeping it from domestic circulation while preserving its use in settling international balances. Other countries adopted the gold exchange standard, which gave the central bank the option of redeeming its notes either in gold or in drafts upon gold standard countries.[11]

Collapse of the Price Level.—The bearing of the gold clause on the recent monetary legislation cannot be understood without reference to the striking fall in the price level; or, stated otherwise, the enormous and rapid rise in the purchasing power of the dollar. The World War, of course, brought a tremendous decrease in the purchasing power of the

[10] The gold bullion standard was adopted in England by the Gold Standard Act, 1925; in France, by its monetary law of June 25, 1928. These laws appear in the Federal Reserve Bulletin, June, 1925, p. 375, and August, 1928, p. 570, respectively. The Bank of the Netherlands suspended the regular delivery of gold coins for domestic use on March 31, 1931. See *Annual Report of the Bank of the Netherlands* for the year ending on that date; and *Federal Reserve Bulletin*, August, 1927, p. 596.

[11] Switzerland adopted a foreign gold exchange standard under a Federal law of December 20, 1929. Belgium adopted a similar standard by Royal Decree of October 24, 1926, and by amendments to the By-Laws of the Belgian National Bank of April 10, 1929. These laws and decrees appear in the *Federal Reserve Bulletin*, May. 1930, p. 305; December, 1926, p. 844; and May, 1930, p. 294, respectively.

dollar; but beginning with 1921 and through 1929 the yearly average purchasing power of the dollar remained steady.[12] In the next three years the wholesale commodity price index of the United States Department of Labor declined by nearly 40 percent; that is, a dollar would purchase about once and a half as much in 1933 as it would during 1921–1929.[13]

A chart portraying the collapse in the price level based upon the Department of Labor's monthly indices for the period 1926–1934 is presented below. This chart should be read keeping in mind the fundamentally different significance of a gradual and a rapid price decline. While in either case fixed charges weigh more heavily, a gradual decline, by reason of its slowness, affords debtors, investors, and industries generally an opportunity to make the necessary adjustments. A rapid decline, on the other hand, affords no such opportunity for the economic machine to maintain its equilibrium.

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[12] The purchasing power of the dollar expressed in terms of wholesale prices (1926=$1.00) for all commodities was 1921, $1.025; 1922, $1.034; 1923, $0.994; 1924, $1.019; 1925, $0.996; 1926, $1.00; 1927, $1.048; 1928, $1.034; 1929, $1.049. United States Department of Labor, *Wholesale Prices*, December and Year 1933, Serial No. R–73, page 3.

[13] The purchasing power of the dollar expressed in terms of wholesale prices (1926=$1.00) for all commodities was 1930, $1.157; 1931, $1.370; 1932, $1.543; 1933, $1.517. United States Department of Labor, *Wholesale Prices*, December and Year 1933, Serial No. R–73, page 3.

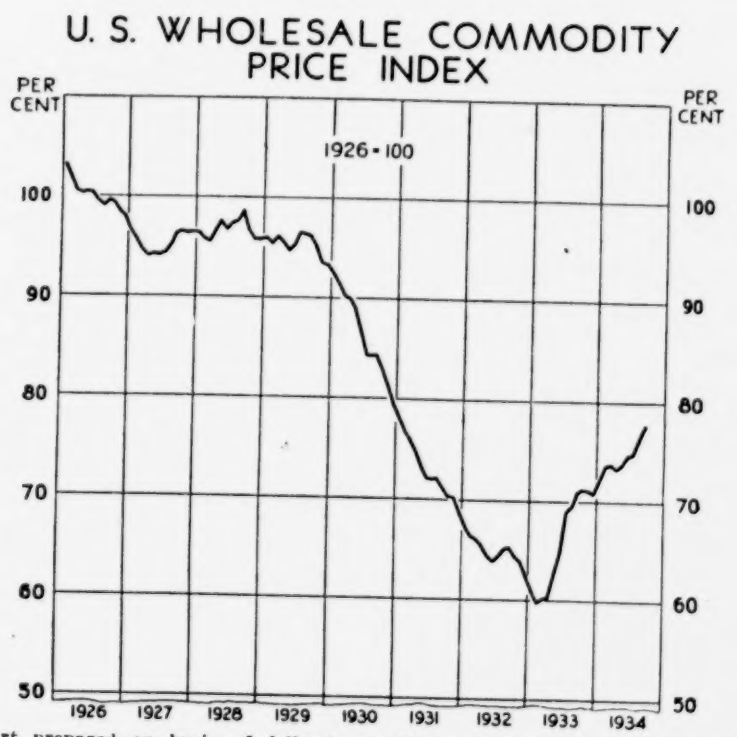

Chart prepared on basis of following table by Division of Statistics and Research, U. S. Treasury Department.

United States Wholesale Commodity Price Index

[1926=100]

	1926	1927	1928	1929	1930	1931	1932	1933	1934
Jan	103.2	96.5	96.4	95.9	92.5	78.2	67.3	61.0	72.2
Feb	102.0	95.8	95.8	95.4	91.4	76.8	66.3	59.8	73.6
Mar	100.6	94.7	95.5	96.1	90.2	76.0	66.0	60.2	73.7
Apr	100.3	94.1	96.6	95.5	90.0	74.8	65.5	60.4	73.3
May	100.5	94.2	97.5	94.7	88.8	73.2	64.4	62.7	73.7
June	100.4	94.1	96.7	95.2	86.8	72.1	63.9	65.0	74.6
July	99.5	94.3	97.4	96.5	84.4	72.0	64.5	68.9	74.8
Aug	99.1	95.2	97.6	96.3	84.3	72.1	65.2	69.5	76.4
Sept	99.7	96.3	98.6	96.1	84.4	71.2	65.3	70.8	77.6
Oct	99.4	96.6	96.7	95.1	83.0	70.3	64.4	71.2	
Nov	98.4	96.3	95.8	93.5	81.3	70.2	63.9	71.1	
Dec	97.9	96.4	95.8	93.3	79.6	68.6	62.6	70.8	
Yr. av	100.0	95.4	96.7	95.3	86.4	73.0	64.8	66.0	

Source: "Wholesale Prices" (monthly bulletins) United States Department of Labor, Bureau of Labor Statistics.

Shrinkage of National Income—Relatively Increased Burden of Long-term Debt Service.—In 1929, our national income was estimated at over 80 billion dollars; by 1932 this had shrunk 50 percent. The annual service on the debts remained fairly constant. The extent to which this debt burden weighed upon our country as a result of the shrinkage of income is illustrated by the following chart and table:

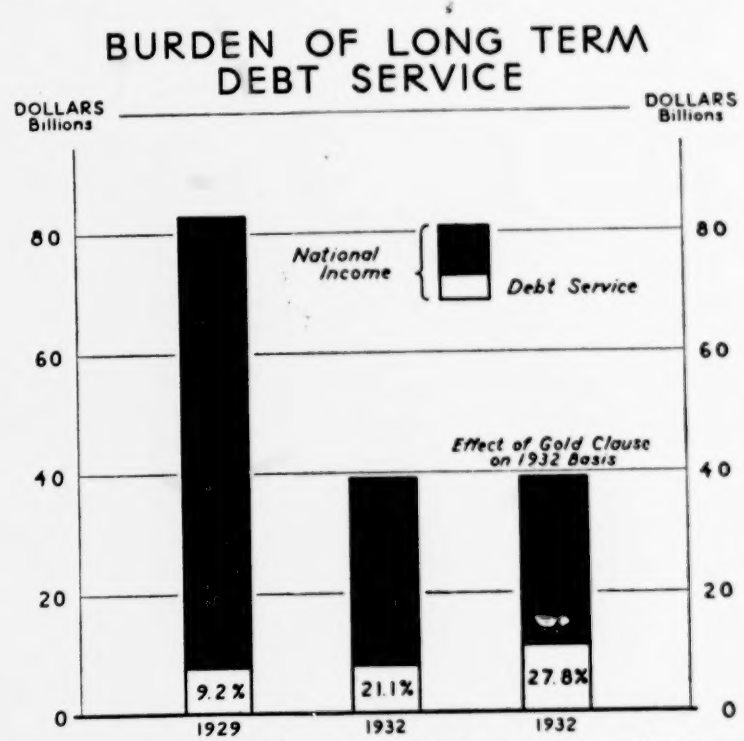

Chart prepared on basis of following table by Division of Statistics and Research, U. S. Treasury Department.

Burden of long-term debt service

[In millions of dollars]

	1929	1930	1931	1932	Debt service as percent of income produced [14]	
					1929	1932
Income paid out:						
Labor income	$52,793	$48,582	$40,896	$31,533		
Property income (interest and dividends)	12,206	12,226	10,498	8,472		
Net rents and royalties	4,116	3,475	2,752	1,865		
Entrepreneurial withdrawals	12,020	11,127	9,102	7,024		
Total income paid out	81,135	75,410	63,248	48,894		
Business savings	1,896	−5,065	−8,604	−9,529		
Income produced	83,031	70,345	54,644	39,365	9.2	20.1

[14] "Known debt service comprises farm mortgage interest payments, accrued interest on funded debt plus amortization and sinking fund charges on the railroad debt, public utility interest charges * * *, and interest charges on the gross public debts plus public debt retirements. Interest charges on urban mortgages, industrial and financial debts are rough estimates based on an assumed average annual interest rate of 6 percent." Total debt service is estimated at $7,642,000,000 in 1929 and $7,910,000,000 for latest available year. If the estimated debt service of 1932, as estimated by Clark, was divided between obligations containing the gold clause and those not containing the gold clause in the same proportions as the total of long-term debt is estimated to be so divided, 55.77 percent of the annual debt service is subject to the gold clause. The enforcement of this clause, by raising the related dollar obligations by 69 percent, would increase the annual debt service on the basis of 1932 estimates from $7,910,000,000 to $10,953,000,000, or by slightly more than 30 percent.

Source: "National Income, 1929-32", Senate Document No. 124, 1934, 73d Congress, 2d Session, pp. 10, 14, for national income; and "The Internal Debts of the United States." Evans Clark, 1933, p. 13, for estimates of the annual debt service and the quotation in note 14.

Disorganization of Foreign Commerce and International Finance.—The decline in our foreign trade which began in 1930 went hand in hand with the increasing restrictions placed by various countries upon the transfer of funds. At the end of 1932 over thirty countries had adopted measures

for the control of their foreign exchange.[15] The contemporaneous decline in our foreign trade is illustrated by the following chart:

[15] Exchange Control as of January 1, 1933.

	Date of Adoption of Exchange Control
Austria	Oct. 9, 1931
Bulgaria	Oct. 15, 1931
Czechoslovakia	Oct. 3, 1931
Denmark	Nov. 18, 1931
Estonia	Oct. 23, 1931
Germany	July 13, 1931
Greece	Sept. 28, 1931
Hungary	July 14, 1931
Iceland	Feb. 17, 1932
Latvia	Oct. 8, 1931
Norway	Informal control by banks since Sept. 29, 1931
Persia	Feb. 25, 1930
Portugal	Oct. 21, 1922
Portuguese East Africa	Apr. 23, 1932
Portuguese West Africa	May 27, 1931
Portuguese Guinea	Feb. 1932
Rumania	May 18, 1932
Spain	July 14, 1930
Turkey (In Dec. 1929 temporary action taken)	Feb. 20, 1930
Yugoslavia	Oct. 7, 1931
Argentina	Oct. 13, 1931
Bolivia	May 19, 1932
Brazil	Sept. 29, 1931
Chile	July 30, 1931
Colombia	Sept. 24, 1931
Costa Rica	Jan. 16, 1932
Ecuador	May 2, 1932
Nicaragua	Nov. 13, 1931
Paraguay	June 29, 1932
Uruguay	May 28, 1931

Source: The above table was computed by the Finance Division, Bureau of Foreign & Domestic Commerce, Department of Commerce, from its special Circulars Nos. 395 and 397.

DECLINE IN FOREIGN TRADE

U. S. Merchandise Trade

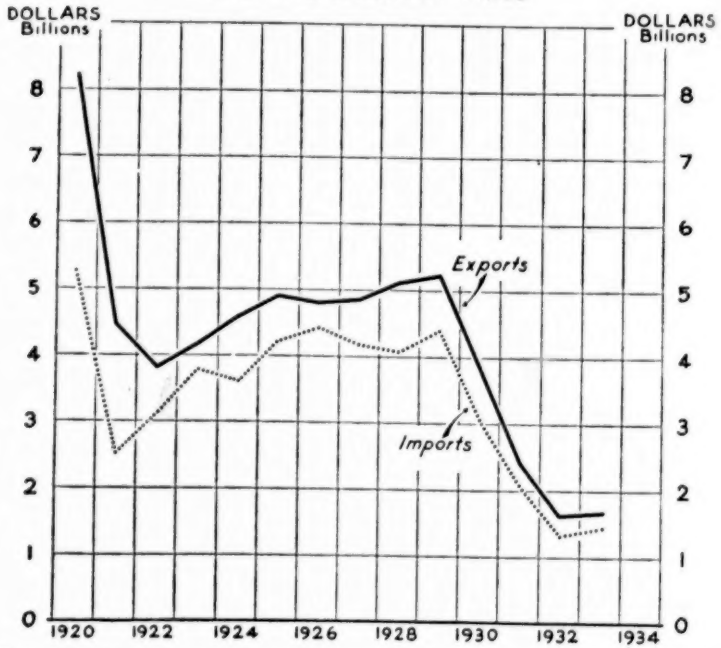

Chart prepared on basis of following table by Division of Statistics and Research, U. S. Treasury Department.

Decline in foreign trade

[U. S. Merchandise Trade—Millions of Dollars]

Year	Exports	Imports	Year	Exports	Imports
1920	8,228	5,278	1927	4,865	4,184
1921	4,485	2,509	1928	5,128	4,091
1922	3,832	3,113	1929	5,241	4,400
1923	4,167	3,792	1930	3,843	3,061
1924	4,591	3,610	1931	2,424	2,090
1925	4,910	4,227	1932	1,612	1,323
1926	4,809	4,431	1933	1,675	1,450

Source: *Balance of International Payments of the United States in 1933*, p. 96, United States Department of Commerce, Bureau of Foreign and Domestic Commerce.

Countries Abandoning the Gold Standard.[16]— Since 1928, one country after another with which the United States trades or competes has abandoned the gold standard. The foreign commerce of the United States was affected most by the abandonment of the gold standard by Great Britain in September, 1931, followed the same year by sixteen other countries. In January, 1933, the pound was quoted in New York at as low as $3.34. Federal Reserve Board, *Daily Statement for the Press, Noon Buying Rates for Cabled Transfers,* January 5, 1933. In terms of the dollar of the old standard, its quotation in New York on November 1, 1934, was $2.94. *Idem,* November 1, 1934. Germany and Italy have not officially suspended gold payments, but have subjected foreign exchange transactions to regulations which, particularly in the case of

[16] The following is taken from "Table IX—Chronological Official Abandonment of Gold Standard", appearing in the League of Nations, Monthly Bulletin of Statistics, October, 1934, page 436:

Argentine	12/16/29	Sweden	9/29/31
Australia	12/17/29	Salvador	10/8/31
Uruguay	12/29/29	Finland	10/12/31
Mexico	7/25/31	Canada	10/19/31
Great Britain	9/21/31	Japan	12/13/31
India	9/21/31	Portugal	12/31/31
British Malaya	9/21/31	Ecuador	2/9/32
New Zealand	9/21/31	Chile	4/20/32
Palestine	9/21/31	Greece	4/26/32
Egypt	9/21/31	Siam	5/11/32
Colombia	9/21/31	Peru	5/18/32
Bolivia	9/25/31	Union of South Africa	12/28/32
Irish Free State	9/26/31	Austria	4/5/33
Denmark	9/29/31	Estonia	6/28/33
Norway	9/29/31		

Germany, have suspended the effect of the operation of the gold standard.[17] France, Belgium, Switzerland, and Holland have maintained the foreign exchange value of their currency at practical parity with gold, but the gold parity of the French franc is only one-fifth of its pre-war parity.

The Withdrawal of Gold and Currency During the Banking Crisis.—During February and until the Proclamation of March 6, 1933, establishing the banking holiday, $476,100,000 in gold was withdrawn from the Federal Reserve banks and the United States Treasury; $311,000,000 for export and earmarking for foreign account, and $165,100,000 for domestic hoarding. Simultaneously the demand for currency for hoarding and export increased the circulation of currency by about $1,840,000,000. *Federal Reserve Bulletin,* April 1933, p. 215. Of greater significance than the amount of the withdrawals in gold is the acceleration, as shown by the accompanying chart on hoarding and gold losses.

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[17] European Financial Notes, No. 173, July, 1934, and special Circular No. 379, October, 1932, Finance and Investment Division, Department of Commerce.

HOARDING AND GOLD LOSSES

Cumulated Increases for Weeks Ended Feb. 8 to Mar. 8, 1933

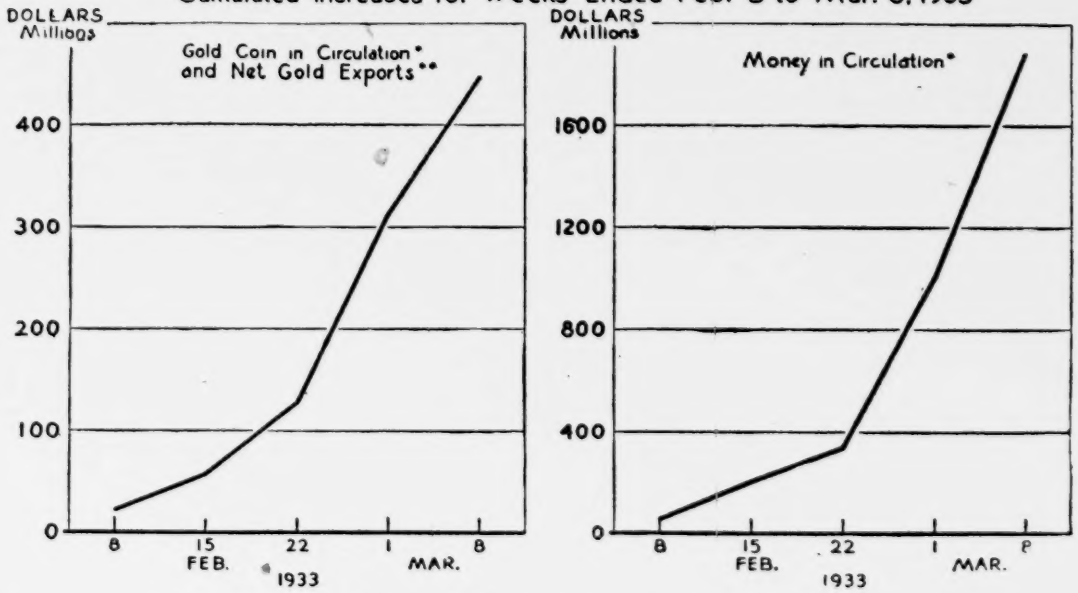

Chart prepared on basis of following table by Division of Statistics and Research, U. S. Treasury Department.

* Source Federal Reserve Bulletin, 1933, page 215.

** Source Federal Reserve Bank of N. Y. Through Federal Reserve Board.

Nor is it without significance that gold clause obligations amounted to approximately $100,000,000,000, while the total available gold reserves of this country were only about $4,000,000,000, in March, 1933, and of the world about $11,000,000,000, (See *Federal Reserve Bulletin,* April, 1933, page 232), a menacing disproportion, particularly in a period of hoarding and stringency.

Hoarding and Gold Losses—Cumulated increases for weeks ended February 8 to March 8, 1933

[Millions of dollars]

Week ended	Gold coin in circulation [1]	Net gold exports [2]	Total gold loss [3]	Money in circulation [1]
Feb. 8	7	15	22	53
Feb. 15	17	39	56	202
Feb. 21	36	91	127	336
Mar. 1	106	206	312	1,067
Mar. 8	140	307	447	1,886

[1] Source: Federal Reserve Bulletin, 1933, page 215.

[2] Source: Federal Reserve Bank of New York through Federal Reserve Board.

[3] In addition to the gold lost through an increase in gold coin in circulation and through gold exports, the Federal Reserve Board estimates that $18,100,000 of gold bullion was hoarded between February 1 and March 4, 1933. $5,000,000 in gold was withdrawn on February 1, 1933; and $6,000,000 in gold was returned between March 4 (when most of the States had bank holidays) and March 8. Thus the totals of gold withdrawn February 1 to March 6, 1933, are as stated in the text, p. 39.

Treasury Department, Division of Research and Statistics.

(II) LEGISLATION DESIGNED TO COPE WITH THE MONETARY AND FINANCIAL CRISIS

To cope with the monetary and financial crisis, to stop first the run on the banks and on the gold reserves of the country and then to attack the causes of the deflation, the relatively increasing debt burden, and the diminishing foreign and domestic commerce, the Congress had to enact legislation of both an emergency and a permanent nature.

The Emergency Banking Act of March 9, 1933, confirmed the President's authority to stop the run on the banks, the withdrawal, export, and hoarding of gold, and the flight of capital into foreign currencies. (See Appendix, page 7.)

An Act of May 12, 1933, authorized the President to reduce the gold content of our monetary unit by as much as fifty percent if he should find that our foreign commerce suffered because we were the only great commercial power which had not yet taken such action, or if he should find it necessary in order to maintain the equality of the different kinds of money of the United States, or if other nations might thereby be induced to stabilize their currencies. The same Act went further to assure the parity of all forms of our money by making every kind of coin and currency issued by or under authority of the United States full legal tender for debts of every description. (See Appendix, page 34.)

The Gold Reserve Act of January 1934 gave more permanent form to these provisions by directing the President to fix the value of the dollar between fifty and sixty percent of its pre-war gold content. This Act also provided for the more effective use of our gold reserves by placing the United States, like England and France, on a gold bullion standard. The Secretary of the Treasury was directed to melt down all gold coins. Future redemptions of currency were to be in gold bullion

and only for the purpose of settling international balances and maintaining the different forms of currency at a parity with one another and with the gold dollar. (See Appendix, page 98.)

The day following the approval of the Gold Reserve Act of 1934, the President, having found that the foreign commerce of the United States was adversely affected by reason of depreciation of various of the currencies of other Governments in relation to the standard value of gold, that an economic emergency required an expansion of credit, and that in order to stabilize domestic prices and protect foreign commerce it was necessary to reduce the weight of the gold dollar, fixed the weight of the gold dollar at 15 5/21 grains nine-tenths fine. The foreign exchange value of the dollar has been stable in terms of gold since that time. *Federal Reserve Bulletin,* October 1934, p. 672.

The Congress adopted an extensive program to provide for relief, to check liquidations and foreclosures, and to stimulate economic recovery, and in order to finance these measures authorized an amount approximately as great as the then outstanding public debt (20 billions) to be borrowed on the credit of the United States. (See page 59, *infra.*)

To supplement our efforts at home, participation with sixty-five other nations in the London Economic Conference of June, 1933, was authorized

(Act of March 4, 1933, c. 282, 47 Stat. 1602, 1611). "For the purpose of expanding foreign markets for the products of the United States (as a means of assisting * * * in restoring the American standard of living, in overcoming domestic unemployment and the present economic depression, in increasing the purchasing power of the American public, and in establishing and maintaining a better relationship among various branches of American agriculture, industry, mining, and commerce)", the President was authorized by the Act of June 12, 1934, (c. 474, 48 Stat. 943) to enter into trade agreements and on the basis thereof to increase or decrease duties by as much as fifty percent and to modify other import restrictions. The first agreement under this authority was made with Cuba and provided against restricting trade through exchange regulations (Treaty Series, No. 866, Article XI).

(III) EFFECT UNDER RECENT LEGISLATION IF GOLD CLAUSE ENFORCEABLE

The gold clause in seventy-five billion dollars of private obligations and twenty-five billion dollars of Federal and State obligations, if enforceable, would have restricted the exercise of the powers of Congress so seriously as to make it impossible to put the foregoing legislative program into effect. The Joint Resolution cut the Gordian knot. Gold clauses were declared contrary to public policy, with the result that it was established unequivocally

that the coins and currencies of the United States which were made full legal tender for all debts by the Act of May 12, 1933, were full legal tender at the same value for gold clause as well as non-gold-clause obligations. The reasonableness of this declaration and the appropriateness of the provision that gold-clause obligations might be discharged upon payment, dollar for dollar, in any legal-tender money of the United States is shown, it is believed, by the following illustrations of the ways in which the gold clause, if enforceable, would have obstructed the exercise by the Congress of its powers to regulate the value of the money of the United States and of foreign coin, to regulate foreign and domestic commerce, and to borrow money on the credit of the United States.

(1) THE GOLD CLAUSE—INCOMPATIBILITY WITH THE PARITY AND LEGAL-TENDER PROVISIONS

The gold clause, if valid, would nullify the power of the Congress to make the coins and currencies of the United States legal tender for all payments. The purpose and effect of the clause are to override the legal-tender and parity provisions established by law and to declare that whatever may be the policy of the Congress, the coins and currencies of the United States shall not have equal value in the discharge of particular debts. If the gold clause were allowed, it would be very easy, as was pointed out by Justice Bradley in the *Legal Tender Cases,* "by the use of one or two additional words

to make all contracts payable in specie" (12 Wall. 457, 567). In short, if gold clauses were enforceable, the power of the Congress to establish the parity and equal legal-tender qualities of all forms of money could easily be rendered illusory.

But the gold clause is not merely inconsistent with the parity and legal-tender provisions. It is a serious obstruction to their maintenance. Every tendency toward fluctuation in the relative value of coin and currency is intensified by the special demand for gold coin, created by the existence of gold-clause obligations. While this tendency to disparity may be met through redemption of currency in specie, an undue strain is put upon the system of redemption, which may ultimately break down completely. If the system of redemption must be suspended for any other reason, disparity caused by demands for gold coin to meet gold-clause obligations would be uncontrollable.

Such, in fact, was the situation in 1933, when it became necessary to suspend redemption of the currency. The Government assumed the responsibility of protecting its citizens from the deflation and liquidation involved in a decision to retain, alone among the great industrial, commercial, and agricultural countries, a monetary unit tied to the prewar gold parity.

Anticipation that it might be necessary to break this tie was enough to create a wide-spread desire to convert both demand and time obligations into gold. On February 28, 1933, the money of the

United States outside of the Treasury amounted to a little over $8,000,000,000, of which about $1,000,000,000 was in gold, $6,500,000,000 in paper currency, and the remainder in silver coin. The paper money consisted of $3,500,000,000 of Federal Reserve notes, which are legal obligations of the United States redeemable on demand in gold or lawful money; over $1,000,000,000 of gold certificates, redeemable on demand in gold coin; about $344,000,000 of United States notes redeemable in gold coin of the standard of weight and fineness fixed by the Act of March 14, 1900; and almost one-half billion dollars of silver certificates, which, together with silver coins, the United States has pledged to maintain at a parity with the gold dollar.[18] All these were demand obligations of the United States. To have permitted, after March 6, 1933, the conversion of demand obligations into gold by the redemption of currency would have been to prefer the demand creditors, foreign and domestic, so long as the supply of gold should last. To have prohibited the conversion of demand obligations into gold, and yet to have continued such conversion of the time obligations, gold-clause bonds, would have been to prefer the time creditors, both public and private. To have suspended redemption of the currency and to have continued redemption in gold of the interest and principal of gold-clause obligations would, therefore, have been

[18] Treasury Department, Circulation Statement, February 28, 1933.

to deny the principle of parity and to deny equal treatment to creditors with equal claims to consideration.

(II) THE GOLD CLAUSE—AN OBSTRUCTION TO THE POWER OF THE CONGRESS TO REGULATE THE VALUE OF MONEY

Whether the gold clause is interpreted to require payment in gold coin or to allow creditors to demand an asserted equivalent in currency, the effect of enforcing the clause would be to deprive the Congress of the power to regulate the value of money. The amount of debt evidenced by gold-clause obligations, measured either in terms of a currency equivalent or the cost of procuring gold coin, would be enormously increased as a result of action of the Government in decreasing the content of the gold standard of value. The effect of the gold clause would be not merely to make a large volume of dollar obligations immune to Congressional regulation of the value of the dollar, but to make so serious the consequences of such regulation that the exercise of this power by the Congress would be rendered impractical. The gold clause obstructs the power of the Congress to increase as well as to decrease the value of the dollar. It will suffice, however, to examine the effect of such clauses in the present situation, after the value of the dollar, in terms of gold, was decreased on January 31, 1934, by 40.94 percent and the value of gold, in terms of dollars, increased accordingly by 69.32 percent.

In terms of dollar amounts the gold clauses contained in corporate bond issues and public-debt securities are the most important. In terms of the burden which would be thrown upon debtors were it not invalidated, the gold clause in the mortgages of individuals assumes similar importance. The income of these people, as well as of the public carriers, public-utility corporations, and industrial companies whose obligations contain the gold clause, is in dollars. If these debtors were now forced to pay the asserted equivalent of the dollar of the old standard, the debt burden on their gold-clause obligations would be increased by 69.32%. The increase in the annual interest payments on private gold-clause obligations alone would be about $2,600,000,000 annually, equivalent to a tax per year of more than $20 on every man, woman, and child in this country. This annual increase would be more than twice the total gross market value of all the cotton and all the wheat grown in the United States in 1930, that amount being $1,191,451,000 (See Brandeis, J., in *Liggett Co.* v. *Lee,* 288 U. S. 517, 566, note 55); one and a half times the estimated amount of the dividends and interest paid in the United States in 1932, the latter amount being $1,642,000,000 (*ibid.*); or five times the amount of the total mortgage interest payments in 1932 on all farm-mortgage debts, the latter amount being $510,000,000. (See Twentieth Century Fund, *The Internal Debts of the United*

States, p. 28.) This annual increase would be almost three times the amount of factory wages paid in 1932, the latter amount being $903,000,000. (288 U. S. 517, 566, note 55.)

This potential increase in the debt burden takes on added significance in the light of the already existing burden of long-term debt service. In 1929, our national income was estimated at over 80 billion dollars; by 1932 this had shrunk 50 percent, but the annual service on the debts remained fairly constant. The extent to which this debt burden weighed upon our country as a result of the shrinkage of income is illustrated by the chart and table on pages 34–35, *supra.*

The annual increase in the interest payments on an estimated $25,000,000,000 principal amount of gold-clause obligations of the Federal Government, the States, and municipalities, would be, at the assumed average rate of 4 percent, $695,200,000. In the case of the Federal Government alone, where the average interest rate is about 3½ percent, the increase in the annual service charge on the approximately $20,000,000,000 principal amount of debt outstanding on January 31, 1933, would be nearly one-half billion dollars.

While the added burden of an increased debt charge would fall heavily on many municipalities already faced with the severe problem of decreased income without a corresponding decrease in funded charges, it would fall most heavily on private cor-

porations and individuals. In the case of the home owner and farmer with a gold-clause mortgage, the relief sought for them and for the depositors and investors in institutions holding their mortgages by such Acts as the Emergency Farm Mortgage Act of 1933, the Home Owners' Loan Act, and the Federal Farm Mortgage Corporation Act would be defeated. It would place a burden on the mortgagor which his reduced income in dollars has already been insufficient to meet, and the Government could not afford to relieve the institutions holding these frozen assets at such an increased cost to itself. In the case of the carriers, public utilities and basic industries whose rates are and must be in dollars, the added burden of an enforceable gold clause would bring widespread bankruptcy.

The alternatives, therefore, which the Congress faced were reduction in the content of the gold dollar accompanied by a denunciation of gold clauses, or retention of the old parity accompanied by a recognition of gold clauses. In choosing between these alternatives, the Congress acted for the benefit of the country as a whole, not for that of particular groups or classes of persons.

Reduction i the content of the gold dollar, as proclaimed by the President on January 31, 1934, was designed to protect the foreign commerce of the United States from the adverse effects of the depreciation of other currencies, to stabilize domestic prices, and to encourage an expansion of credit. This action followed substantially similar

action by almost every other commercially important country in the world, as has been shown *supra,* page 30. It resulted, however, in no real loss to holders of unenforceable gold-clause obligations. The drastic decline in the general price level, shown *supra,* page 33, brought about a situation in which a coupon holder who received $10 in 1933 could purchase one and one-half times as much as he could have purchased were his coupon payable in 1921 to 1929. If the gold clause were enforceable, as respondents contend, the coupon holder who received today $16.93 on a $10 coupon could purchase with the proceeds over twice as much as could have been purchased with the $10 during 1921–29. To require the asserted equivalent of gold coin of the former standard would, therefore, result in a profit to bondholders consequent upon governmental action, and would aggravate the situation which that governmental action was expected in part to remedy.

It must be emphasized, finally, that the increase in the debt burden would be no mere incidental consequence of reduction in the gold content of the dollar, but would result from an agreement of the contracting parties conditioned, in effect, upon the exercise by the Congress of its power to regulate the value of money. Claims for the enforcement of gold clauses in terms of the new statutory value of the gold dollar are thus an attempt by creditors to avail themselves, on the one hand, of governmental action with respect to the value of money

and to avoid, on the other, what the Congress rightly regarded as a necessary corollary of that regulation.

(III) THE GOLD CLAUSE—INCOMPATIBILITY WITH LEGISLATION TO PROTECT THE CURRENCY RESERVES AND TO PROVIDE FOR MORE EFFECTIVE USE OF GOLD.

The gold clause, construed as an obligation to pay gold coin, would have prevented, if found enforceable, the monetary legislation designed to protect the currency reserves and to provide a more effective use of monetary gold.

It has been the tendency in the countries of principal commercial importance, as shown *supra,* page 30, to do away with the use of gold in coin and to conserve it as the reserve for the currency system. The United States has enjoyed a very large gold reserve. On March 4, 1933, the monetary gold stocks of this country were $4,242,000,000, of which $3,616,000,000 was in the Treasury and Federal Reserve banks. See *Federal Reserve Bulletin,* April 1933, p. 215. This amount, large as it was, was not considerable compared with the principal amount of the domestic gold clause obligations, aggregating approximately $100,000,000,000, and carrying a service charge aggregating over $4,000,000,000 annually. Moreover, the gold reserves were subject to sudden, violent, and unpredictable withdrawals. As has been shown *supra,* page 39, during February and until the Proclamation of March 6, 1933, about $475,000,000 in gold which could have been used by the Treasury and Federal

Reserve banks for currency reserves was withdrawn; and at the same time the demand for currency for hoarding and export increased the circulation of currency by about $1,840,000,000.[19] The reserve ratio of the Federal Reserve system was reduced from 65.6 percent on February 1, 1933, to 45.1 percent on March 4, 1933. *Federal Reserve Bulletin,* April 1933, p. 211.

The Gold Reserve Act, as has been noted, provided for the complete withdrawal and melting down of gold coin. The withdrawal of gold coin from circulation and the keeping of gold solely in the form of bullion to be used in the settlement of international balances had been advocated by nu-

[19] The abnormal demand for currency generates a vicious circle which is particularly adverse to an effective use of gold in our Federal Reserve system. In periods of hoarding and weakened confidence, banks are reluctant to rediscount eligible paper with the Reserve banks; therefore the collateral for note issues consists, in an unduly large part, of gold; and the amount of "free gold" with which the Reserve banks might engage in open-market purchases of securities, to relieve the situation, is depleted. "In the final analysis, therefore, the reserve base itself is shrunk at the very time when the credit system urgently needs resistance to deflation." L. D. Edie, *The Future of the Gold Standard*, in *Gold and Monetary Stabilization*, 1932 (Q. Wright, ed.), p. 123. This problem of "free gold" led to the enactment of a temporary measure, in 1932, making Government bonds eligible, under certain circumstances, as collateral for Federal Reserve note issues. Act of Feb. 27, 1932, c. 58, 47 Stat. 56, extended by Act of Feb. 3, 1933, c. 34, 47 Stat. 794, and by Act of March 6, 1934, c. 47, 48 Stat. 398, 12 U. S. C., Sec. 412. See Sen. Rep. 237, 72d Cong., 1st Sess., on S. 3616. But the circulation of gold coin and the subjection of gold to withdrawal were fundamental causes of inefficiency in the utilization of monetary gold.

merous economists and bankers.[20] The President, in his message of January 15, 1934, recommending passage of the bill which became the Gold Reserve Act of 1934, said:

> Certain lessons seem clear. For example, the free circulation of gold coins is unnecessary, leads to hoarding, and tends to a possible weakening of national financial structures in times of emergency. The practice of transferring gold from one individual to

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[20] See E. W. Kemmerer, in *Hearings Before the Senate Committee on Banking and Currency, 73d Cong., 2d sess., on S. 2366* (revised ed.), at pp. 206, 208, 224; J. P. Warburg, in *Hearings, supra*, at p. 201; and in *Hearings Before the House Committee on Coinage, Weights and Measures, 73d Cong., 2d sess., on H. R. 6976*, at p. 156; F. A. Vanderlip, in *Hearings Before the House Committee on Coinage, Weights and Measures, 73d Cong., 2d sess., on H. R. 6976*, at pp. 23–24; Pasvolsky, *The Gold Standard Before and After the War*, in *Annals of the American Academy of Political and Social Science* (Philadelphia, Jan. 1933), pp. 173–174; *Report of the Gold Delegation of the Financial Committee of The League of Nations*, C. 502, M. 243, 1932 II. A., pp. 52–56; *Interim Report of the Gold Delegation of the Financial Committee of The League of Nations*, C. 375, M. 161, 1930. II (Geneva, 1930,) pp. 18–20; *Annotated Agenda for World Monetary and Economic Conference, League of Nations Document*, C. 48, M. 18, 1933. II (Geneva, 1933), reprinted in part in Pasvolsky, Current Monetary Issues (Washington, D. C., 1933), pp. 135, 139–145; Sir Otto Niemeyer, *How to Economize Gold*, in *Collected Papers of the Royal Institute of International Affairs, on the International Gold Problem* (London, 1931), pp. 84–93; Sir Arthur Salter, *Recovery—The Second Effort* (N. Y. 1932), pp. 78–79.

> another or from the Government to an individual within a nation is not only unnecessary but is in every way undesirable. The transfer of gold in bulk is essential only for the payment of international trade balances.

This measure could not have been adopted if it had been necessary to make gold coin available to discharge $75,000,000,000 principal amount of private gold clause obligations and $25,000,000,000 of public gold clause obligations.

In this connection the House Committee, which recommended favorable action on the gold clause resolution, stated in its report (H. Rep. No. 169, 73d Cong., 1st sess., p. 1):

> * * * If the gold clause applied to a very limited number of contracts and security issues, it would be a matter of no particular consequence, but in this country virtually all obligations, almost as a matter of routine, contain the gold clause. In the light of this situation two phenomena which have developed during the present emergency make the enforcement of the gold clauses incompatible with the public interest. The first is the tendency which has developed internally to hoard gold; the second is the tendency for capital to leave the country. Under these circumstances no currency system, whether based upon gold or upon any other foundation, can meet the requirements of a situation in which many billions of dollars of securities are expressed in a particular form of the circulating medium,

particularly when it is the medium upon which the entire credit and currency structure rests.

Proof of the incompatibility of the gold clause with the protection of the currency reserves and effective use of gold, is afforded by the experiences immediately before and after declaration of the banking holiday. It has been noted that about half a billion dollars in gold was withdrawn during February and the first four days of March, 1933. The regulations issued pursuant to the Executive Orders of April 5 and April 20, 1933, provided (in Article 5) for licenses for the acquisition from Federal Reserve banks of gold coin or bullion not in excess of the amount of gold coin, bullion, or gold certificates surrendered pursuant to the Executive Order of April 5, 1933, upon the showing of the need for such gold coin or bullion, for "a proper transaction not involving hoarding." The Treasury received such a large number of applications for licenses to acquire gold that the Acting Secretary of the Treasury ruled by an official Treasury telegram to the officers of Federal Reserve banks dated April 28, 1933, that "Until further notice the Secretary of the Treasury will grant no licenses for the acquisition of gold, gold coin or bullion * * * for the purpose of meeting maturing obligations calling for payment in gold coin or bullion, within the United States or elsewhere, except where such applicants have surrendered gold coin, gold bullion or gold certificates in obedi-

ence to the Executive Order of April 5, 1933." (See telegram printed in full on page 21 of the Appendix.) For the Treasury to have ruled otherwise, and to have permitted the payment of gold coin, would have accomplished no useful purpose if the coin were returned by the persons paid, as required by the Executive Order of April 5, 1933; and would have dissipated the gold reserves if the gold were withheld in violation of such order. The legal-tender provisions of the Act of May 12, 1933, and the gold-clause resolution itself, were a logical recognition of this situation. (Note the second paragraph of the Treasury statement quoted on page 27.) They were, in addition, a necessary step preparatory to the permanent measures for more effective use of gold reserves, adopted in the Gold Reserve Act of 1934.

(IV) THE GOLD CLAUSE—AN OBSTRUCTION TO THE POWER OF THE CONGRESS TO BORROW MONEY

On January 31, 1933, the United States had outstanding interest-bearing obligations of a principal amount in excess of $20,000,000,000. Practically all of these obligations either contained a gold clause or came within the purview of statutory provisions for payment in gold coin of the standard fixed by the Act of March 14, 1900, c. 41, 31 Stat. 48; Act of March 18, 1869, c. 1, 16 Stat. 1; Act of February 4, 1910, c. 25, 36 Stat. 192; Act of March 3, 1917, c. 159, 39 Stat. 1000, 1002; Act of March 4, 1917, c. 191, 39 Stat. 1201; Act of April 24, 1917, c. 4, 40 Stat. 35.

The various measures adopted by the Congress for relief and to stimulate economic recovery, called for the expenditure and the borrowing of great sums of money. The authority of the Secretary of the Treasury to borrow money was increased by $10,500,000,000, and agencies of the Government were authorized to issue obligations guaranteed by the United States as to interest, or as to principal and interest, in the aggregate amount of $9,200,000,000.[21]

[21] The amount which the Secretary of the Treasury was authorized to borrow under the Second Liberty Loan Act had already been increased from twenty billion dollars to twenty-eight billion dollars by the Act of March 3, 1931 (c. 433, 46 Stat. 1506).

The Reconstruction Finance Corporation Act of January 22, 1932 (c. 8, 47 Stat. 5, 9, as amended July 21, 1932, c. 520, 47 Stat. 715), had authorized that corporation to issue securities, fully guaranteed by the United States as to principal and interest, to an amount of six and three-fifths times its subscribed capital stock of $500,000,000, giving the corporation an ultimate borrowing capacity of $3,300,000,000, which was increased by later Acts. Early in 1933 it became apparent that further sums of money would be necessary to afford relief and to stimulate economic recovery. The Emergency Farm Mortgage Act of May 12, 1933 (c. 25, 48 Stat. 31), authorized the Federal Land Banks to issue Farm Loan Bonds up to an aggregate amount of two billion dollars, guaranteed as to interest by the United States. The Home Owners' Loan Act of June 13, 1933 (c. 64, 48 Stat. 128), authorized the corporation to issue bonds in an aggregate amount not to exceed two billion dollars, guaranteed as to interest by the United States. This was amended to provide for the guaranty of principal as well as interest, of bonds to be issued thereafter, by the Act of April 27, 1934 (c. 168, 48 Stat. 643). The Gold Reserve Act of January 30, 1934 (c. 6, 48 Stat. 343), increased the amount which the Secretary of the Treasury could borrow against the issuance of notes from $7,500,000,-

After the Act of May 12, 1933, authorized the President to decrease, by as much as fifty percent, the weight of the gold dollar, the Treasury could not issue bonds calling for payment in gold coin of the old standard without knowingly incurring a debt which might ultimately reach twice the amount received on the sale of the bonds. To borrow money upon such terms would have been to favor a few investors at the expense of all the taxpayers. Nor could this dilemma be avoided by leaving the gold clause out of the new bond issues while sanctioning such clauses in outstanding obligations, public or private; since investors, so long as it was anticipated that the President might exercise his power under the Act of May 12, 1933, would prefer the old issues, public or private, to such an extent as to require prohibitive rates upon the new. Furthermore, to have prohibited gold clauses in new obligations while sanctioning them in the old would have been to permit a revival of the dual monetary system of the middle nineteenth century. Senator Fletcher, Chairman of the Committee on Banking and Currency, which reported the gold-clause Resolution favorably, stated:

> The situation cannot be met merely by enabling new obligations to be payable in legal

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000 to $10,000,000,000. The Federal Farm Mortgage Corporation Act of January 31, 1934 (c. 7, 48 Stat. 344), established a Federal Farm Mortgage Corporation authorized to issue and to have outstanding at any one time bonds in an aggregate amount not to exceed two billion dollars, guaranteed as to both principal and interest by the United States.

> tender without creating a difference in value between the old and the new obligations and impairing or destroying the market for new obligations. Investors would no doubt prefer private obligations with a gold clause to Government obligations payable in currency. In other words, we cannot make a distinction. The moment bonds or certificates or notes are offered to the public payable in legal tender, with outstanding obligations of the Government payable in gold, it will be seen that investors would rush to the gold obligations and call for that sort of security and would not take the new certificates or the new debentures or the new bonds or the new obligations. It will interfere both with financing of the Government and financing of private enterprise. *We would pass two different kinds of currency if we were to attempt that.* (77 Cong. Rec., Pt. 5, 4890.) (Italics ours.)

It will be recalled that the Treasury Statement of May 26, 1933 (quoted *supra*, page 26), declared that the purpose of the Joint Resolution was to make it clear that all obligations, past and future, should be upon the same footing.[22]

The provision of the Resolution prohibiting the use of gold clauses in obligations thereafter incurred was necessary in aid of the Government's power to borrow. The United States could not, of

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[22] Both Houses of Congress rejected proposed amendments limiting the application of the Resolution to future issues. 77 Cong. Rec., Pt. 5, pp. 4556, 4890, 4920–21.

course, continue the use of gold clauses in its obligations after such provisions were declared by the Congress to be against public policy. Private debtors might, on the other hand, continue to use such clauses in the hope that at some future time they would be sanctioned by an act of the Congress; and so long as such a possibility existed new issues of public obligations would suffer in comparison with private obligations [23] which enjoyed this speculative element.

(V) THE GOLD CLAUSE—AN INTERFERENCE WITH THE POWERS OF THE FEDERAL GOVERNMENT OVER INTERNATIONAL RELATIONS, FOREIGN EXCHANGE TRANSACTIONS, AND FOREIGN COMMERCE

The month following the introduction of the Joint Resolution, the United States was to join sixty-five other nations in the Monetary and Economic Conference at London. The annotated agenda for that conference invited attention to the disordered state of currencies of the world and the impediments to world trade not only of the fluctuating exchanges but of currencies revalued too high or too low in relation to one another. *League of Nations Document,* C. 48, M. 18, 1933, pp. 13–14. The pendency of the Conference emphasized the fact that if the monetary powers of Congress were to be hampered by the wide-spread use of the gold clause in dollar obligations, the United States could

[23] On June 7, 1933, two days after the approval of the Joint Resolution by the President, the Treasury announced an offering of $900,000,000 in Treasury notes and certificates of indebtedness.

not negotiate on terms of equality with other countries.

The gold clause, if enforceable, would not only impair the powers of the Federal Government to cooperate with the Governments of other countries in respect of monetary and commercial matters, but would weaken the powers of the Federal Government by unilateral action to defend our money and our foreign and domestic commerce from detrimental foreign conditions and policies. The recent financial and economic situation (to certain features of which reference has been made on pages 28 to 41, *supra*) confirmed the fact that particularly in the international sphere our Federal Government must preserve the authority, when circumstances require, to suspend temporarily the functioning of the gold standard, to regulate transactions in foreign exchange, and to regulate the foreign exchange value of the dollar. The crisis which culminated with the Federal banking holiday called for the exercise of each of these powers. Enforcement of the gold clause would have nullified the defensive steps taken with respect to each one.

Following the War, a large number of countries with no gold supplies of their own adopted the "gold-exchange standard"; that is, they promised to maintain their currencies at a parity with gold by redeeming in certain gold-standard currencies. Thus an inverted pyramid was built on the gold reserves of France, England, and this country. With every flurry of confidence, the Central Banks

of these gold-exchange countries rushed to convert their balances into gold.[24] But they were not alone; by March 1933, the successive financial crises in Vienna, Berlin, and London had set loose a quantity of "international capital" which wrought havoc in the foreign-exchange markets.[25] The growing conviction at home and abroad that the United States would soon be forced to stop the downward spiral of prices (see page 33, *supra*) by cutting loose, as practically every other country had done (see pages 29 and 30, *supra*), from the tie

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[24] "America returned to gold at par in 1919 and England in 1925. To maintain the pre-war gold standard, and the then price level above the pre-war level, presupposed the utmost economy in the use of gold. * * * The countries of continental Europe * * * pretty generally adopted the gold-exchange standard * * *. The central banks of such continental countries carried part of their reserves abroad, on deposit with or invested through the Bank of England and the Federal Reserve Bank. That is to say that gold in England and America served as a base not only for the currencies and credit of these two countries, but for those of many other countries. * * *. That facilitated the inflation of the later 1920's and exaggerated the deflation of the early 1930's * * *." Russell Leffingwell, former Assistant Secretary of the Treasury, Proceedings of the Academy of Political Science, Vol. XVI, No. 1, April 1934, p. 73.

[25] "In the series of crises which began in Austria with the failure of the Credit Anstalt in 1931, 'bad' money flew from Vienna, from Berlin, from London, from New York, not in response to the bank rate but in response to fear and to the hope of speculators. The whole world's economy was thus battered to pieces because gold, moving in response to the movement of short funds and fright, had ceased to be a factor of stability and had become a force of disequilibrium." Leffingwell, *supra* note 24, p. 75.

to its pre-war gold unit, a conviction stimulated by the progressive bank closings, started these forces to work. The accelerating currency and gold withdrawals ensued.[26] But if the gold clause were enforceable, it would have been impossible to break the tie to the pre-war gold dollar and so adopt a universally accepted means of stopping the drains upon gold reserves and checking deflation—that is, the suspension of gold payments on currency. But to suspend redemption of five billion dollars of currency would be fruitless if payments were main-

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[26] The crises in Austria and Germany caused withdrawals from London. * * * England's inability to face further deflation had been demonstrated * * * Thus England was forced off gold.

"A year and a half later America was driven off gold too; after three great runs on our gold; after three great resulting waves of panic and deflation, in 1931, 1932, and 1933; long after every other great power, every nation, indeed, except Holland and Switzerland, had abandoned the pre-war standard. America resisted five long months after President Hoover had publicly stated on the authority of the Secretary of the Treasury that the country had once already been within two weeks of going off. * * *

"We had more gold than England; so we could stand the strain longer; and because we could stand it longer, we suffered more. We had more gold and so we had a more topheavy credit structure; and for that reason too we suffered more. The circumstances were different but the ultimate cause was the same. Both countries were forced off by the impossibility of maintaining both the pre-war gold parity of their currencies and the post-war price level; and the impossibility of enduring further deflation of that price level. The burden of debts had become unbearable." Leffingwell, *supra* note 24, p. 76.

tained in gold of the old standard of twenty billion dollars of Federal obligations alone; and would be productive of evils worse than those designed to be cured if payments on both public and private obligations were required to be made in the asserted gold value at a depreciated currency.

The consequences, already indicated, which would attend a reduction in the content of the gold dollar, would necessarily prevent regulation of the foreign exchange value of the dollar. This strikes at the heart of the Congressional power to regulate our foreign commerce. The decline in our foreign trade, noted *supra*, p. 37, was undoubtedly due in part to the adverse effect of depreciated and fluctuating foreign currencies.[27] Foreign exchange rates going heavily against countries purchasing our products must generally result in either fewer purchases or a lower price in dollars paid for the exported products. If the foreign exchange rates against the currencies of countries competing with our own are not equally unfavorable to the foreign

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[27] "If, then, men and nations are to exchange goods and to trade on a constantly increasing scale, one of the first requisites is a common medium of exchange. * * * Widely fluctuating exchange rates and the uncertain value of currencies enormously enhance the risks and difficulties of doing business abroad * * *." Hon. Ogden L. Mills, Former Secretary of the Treasury, Proceedings of the Academy of Political Science, Vol. XVI; No. 1, April 1934; pp. 100, 102.

purchaser, a tendency is created for the trade to be diverted away from us to the competing country.[28] It is important that the dollar be not overvalued or undervalued on the exchanges by virtue of stabilization. On this subject the annotated agenda for the Monetary and Economic Conference, June 1933, contained the following statement:

> The experience of the last decade has shown that the restoration of the gold standard at too low a rate of exchange as well as too high a rate presents grave disadvantages, not only from a national, but also from the international, point of view. (Reprinted in Pasvolsky, *Current Monetary Issues*, pp. 136–137.)

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[28] Whether the volume of exports is decreased, or the amount of currency received for them is decreased, there may be a tendency for domestic prices to drop, because of the increased domestic supply or the effort to compete with other countries. This result is not theoretical or imaginary. A number of authorities have declared that this is precisely what happened in Great Britain upon restoration of the gold standard in 1925 at a level believed to have been too high. See J. M. Keynes, Essays in Persuasion, N. Y. 1932, pp. 244–253; Sir Josiah Stamp, *Papers on Gold and the Price Level*, London, 1932, pp. 18, 110–114; Parliamentary Committee on Finance and Industry, Great Britain (1931), *Minutes of Evidence*, pp. 186–188 (Evidence of Federation of British Industries); John H. Williams, *The World's Monetary Dilemma*, in *Proceedings of Academy of Political Science*, April 1934, pp. 63–64. The extent to which this tendency will affect the domestic situation will depend upon the relative importance of the foreign trade of the country.

(VI) THE GOLD CLAUSE IN OTHER COUNTRIES

The reasonableness of the Congressional determination that the gold clause is against public policy, and the appropriateness of the provision that gold clause obligations may be discharged upon payment, dollar for dollar, in other legal-tender money, are confirmed by the experience of other countries. At one time or another, in connection with the regulation of their monetary systems, various foreign countries have dealt with the question of the gold clause in a manner similar to that adopted by the Congress in the Act of May 12, 1933, and in the Joint Resolution.[29]

3. The resolution is within the powers of Congress

The preceding portion of this brief has sought to demonstrate the reasonableness of the Congressional determination that gold clauses, in both public and private obligations and in both existing and future contracts, obstruct the exercise of Congres-

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[29] See Appendix, pages 149–152, for extracts from statutes or decrees abrogating gold clauses in Belgium, France, Germany, Norway, Roumania, and Sweden. For comparable legislation in other countries, see Arthur Nussbaum, *Comparative and International Aspects of American Gold Clause Abrogation*, 44 Yale Law Journal 53; Madden and Nadler, *Foreign Securities* (1929), Chs. 14, 15; R. L. Garis, *The Gold Clause*, in *Annals of the American Academy*, January 1933, pp. 220–221.

In Great Britain the problem of gold clauses has not been serious, because of the small amount of such obligations there issued. See A. Nussbaum, *La Clause-Or dans les Contracts Internationaux*, in *Recueil des Cours*, 1933, pp. 567, 570; Madden and Nadler, *supra*, pp. 319–320.

sional powers, and are inconsistent with our present monetary system. This portion of the brief will seek to demonstrate that the Congress, under its Constitutional powers to regulate the value of money, to borrow money, and to regulate foreign commerce, has authority to declare against public policy, and therefore unenforceable, contractual provisions which are inconsistent with and obstruct the exercise of those powers.

The scope of the monetary powers of the Congress was described by this Court in *Juilliard* v. *Greenman*, 110 U. S. 421. Mr. Justice Gray there said (p. 439): "The breadth and comprehensiveness of the words of the Constitution are nowhere more strikingly exhibited than in regard to the powers over the subjects of revenue, finance, and currency * * *." It was there pointed out that Congress may impress upon obligations of the United States "such qualities as currency for the purchase of merchandise and the payment of debts, as accord with the usage of sovereign governments" (p. 447). The content of the power granted in the Constitution was examined in the light of the "power universally understood to belong to sovereignty, in Europe and America, at the time of the framing and adoption of the Constitution of the United States" (p. 447).

A. Power over the coinage and currency

The Congress has power "To coin Money" and "regulate the Value thereof, and of foreign Coin."

When the framers of the Constitution granted this power, they did not contemplate that the value of money in terms of gold and silver would be fixed unalterably by the First Congress. The power granted was a continuing power and it has been exercised as such. The ratio between the gold and the silver dollar was established in 1792 at 15 to 1. The Act of June 28, 1834, c. 95, 4 Stat. 699, reduced the content of the gold dollar from 27 to 25.8 grains of standard gold. The Act of January 18, 1837, c. 3, 5 Stat. 136, 137, by changing the fineness of the gold in the dollar, increased its gold content. Congress has also exercised its power to regulate the value of foreign coin.[30]

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[30] The Act of July 31, 1789 (1 Stat. 41), fixed the value of the pound sterling at $4.44\frac{4}{9}$. Based upon the relative metallic content of the British and American coins, the parity prior to 1834–1837 would have been $4.54, or about 91_2 cents more than the legal parity. After the new standard of 1834–37 was established, the metallic parity became $4.8665, but legal parity continued at $4.44

By an Act of July 27, 1842 (c. 66, 5 Stat. 496), the value of the pound sterling was fixed at $4.84. By subsequent Act of March 3, 1873 (c. 268, 17 Stat. 602), the value of the pound sterling was changed, in terms of dollars, to $4.8665. This value was to apply not only "in all payments by or to the treasury", but also "in the construction of contracts payable in sovereigns or pounds sterling; and this valuation shall be the par of exchange between Great Britain and the United States; and all contracts made after the first day of January, 1874, based on an assumed par of exchange with Great Britain of fifty-four pence to the dollar, or four dollars forty-four and four-ninths cents to the sovereign or pound sterling, shall be null and void." See *Collector* v. *Richards*, 23 Wall. 246.

The power to alter the content of the coinage carries with it the power, in consequence, to "subject creditors to a corresponding loss." This power was never doubted and was expressly approved in the *Legal Tender Cases*, 12 Wall. 457, 551–552:

> By the act of June 28, 1834, a new regulation of the weight and value of gold coin was adopted, and about six percent was taken from the weight of each dollar. The effect of this was that all creditors were subjected to a corresponding loss. The debts then due became solvable with six percent less gold than was required to pay them before. The result was thus precisely what it is contended the legal-tender acts worked. But was it ever imagined this was taking private property without compensation or without due process of law? * * * Other statutes have, from time to time, reduced the quantity of silver in silver coin without any question of their constitutionality. * * *

The power of the Congress to provide for and to terminate the coinage of gold and silver likewise carries with it the power, in consequence, to subject debtors and creditors to a corresponding loss or gain. In 1870 gold and silver were freely coined at the mints, so that one ounce of silver equalled $1.29 in gold or silver coin. By an Act of 1873 (c. 131, 17 Stat. 424, 427) the free coinage of silver was discontinued. In 1890 silver sold at an average market price of $.96804.[31] Thus a person who in 1870 con-

[31] *Annual Report of the Director of the Mint*, 1890, p. 23.

tracted a debt payable twenty years hence, might have expected to be able to satisfy that debt with a dollar of the value of whichever of the metals was the cheaper at the time for payment. The discontinuance of the coinage of silver deprived him of that expectancy.

Not only may the Congress vary the content of the dollar and the terms of the coinage, and so affect the liability of debtors and the recovery of creditors, but it may issue irredeemable paper money which shall be receivable in the discharge of money obligations incurred when only coin was legal tender. This power is unquestionable since the decision in *Legal Tender Cases, supra,* which, together with the later decision in *Juilliard* v. *Greenman,* 110 U. S. 421, goes far to sustain the validity of the Joint Resolution. In those cases it was held that the Congress, by virtue of the power to coin money, to issue bills of credit, to borrow money on the credit of the United States, and to pass laws necessary and proper for the carrying out of those powers, might validly declare that money contracts could be discharged by payment of the face amount of the debts in irredeemable United States notes, even though such notes were greatly depreciated in terms of coined money and even though only gold or silver coin was legal tender for the discharge of the contracts when they were entered into.

The only significant difference between those cases and the one at bar is that there the contracts did not expressly provide for payment in gold or

silver, although such was doubtless the contemplation of the parties when the contracts were made. This difference cannot serve to defeat the power of the Congress to declare what shall be legal tender for the payment of debts. Indeed, it appears more difficult to support the power of the Congress to establish a monetary system in which one dollar may be of a different kind and of varying value, in comparison with another dollar, or good for one purpose and not good for another, as declared in the *Legal Tender Cases,* than it is to support the power of the Congress to ordain that every dollar shall be of equal value with every other in the payment alike of private debts and public dues and that no person may prescribe a particular dollar by contractual provision. It was not doubted that gold-clause obligations were subject equally with other money obligations to the power of the Congress. The only reason why gold clauses continued to be valid after the *Legal Tender Cases* is that the Legal Tender Acts were construed not to apply to them.

Having established paper currency as legal tender, the Congress has power to make that currency effective by requiring that it be receivable at its face value, equally with other money, in the discharge of all obligations. The Congress has power to assure uniform value to the coins and currency of the United States. Such an objective was declared in the Act of November 1, 1893, c. 8, 28 Stat. 4, and in the Parity Act of 1900, c. 41, 31 Stat. 45

(31 U. S. C., Sec. 314). An important step toward the uniformity of all forms of money was taken in the Act of May 12, 1933, as amended by the Joint Resolution, declaring that all coins and currency issued by the United States should be receivable at their face amount in payment of all debts and obligations.

But it was not incumbent upon the Congress to stop with a declaration of the uniform legal-tender qualities of all forms of money. By declaring, in the Joint Resolution, that gold clauses were unenforceable, the Congress took a complementary and necessary step to prevent the placing of a premium upon one form of money by the agreement of private parties. The Congress has in the past sought to achieve uniformity in the value of money by various means. Even before the issuance of legal-tender currency such a purpose had been served by the changes, already referred to, in the ratio between the content of gold and silver dollars. After the issuance of national-bank currency this Court sustained the imposition by the Federal Government of a destructive tax upon the issue of state bank notes for the purpose of driving the latter out of circulation and so relieving national bank notes from competition with them. *Veazie Bank* v. *Fenno,* 8 Wall. 533. A tax similar to that upheld in the *Veazie Bank* case was imposed upon banks which paid out as currency notes of any town, city, or municipal corporation. The tax was sustained by this Court, speaking through Chief Jus-

tice Waite, in *National Bank* v. *United States*, 101 U. S. 1. Still other measures may be taken by the legislature to preserve the efficiency and uniformity of the various forms of money. In *Ling Su Fan* v. *United States*, 218 U. S. 302, this Court upheld a law of the Philippines prohibiting the export of silver coin, which had a greater value as bullion in foreign markets than as coin in the Philippines.

It is clear, then, that in establishing the uniformity of money the Congress may legislate to counteract the effect of market conditions upon the value of money, as in the statutes of 1834 and 1853; to overcome the policy of States; and to counteract the activities of private parties. It is established also that this purpose may be accomplished by taxation, by altering the content of the coinage, by changing the legal tender qualities of money, and by prohibiting the profitable export of coin. No valid reason can be suggested why the Congress, in maintaining the uniformity and efficiency of the various forms of money, may not also counteract the effect of obstructive agreements between private parties and do so by declaring such agreements unenforceable.

B. Power to borrow money

The financial interests of the Government itself have afforded broad scope for legislation. By virtue of the power to borrow money on the credit of the United States, together with the power to pay the debts of the United States, the Congress

has been permitted to establish institutions with Government support and to subordinate the financial interests of private individuals to those of the nation. Thus, although the Constitution granted no express power to create banks, the authority was implied by Chief Justice Marshall from the fiscal powers granted to Congress. *McCulloch* v. *Maryland,* 4 Wheat. 316. Although the Congress has no express power to establish financial institutions to lend money upon farm mortgages, such authority was implied from the power to borrow, where the institutions set up were empowered to act as fiscal agents and as depositaries of public moneys, even though such powers had not been used and it was obvious that it was not the primary intention of the Congress that the institutions should be utilized for such purposes. *Smith* v. *Kansas City Title and Trust Company,* 255 U. S. 180. Although nothing in the Constitution provides that securities of the United States shall be exempt from taxes imposed by a State upon private securities, such exemption was required, largely on the basis of the power of Congress to borrow money. *Weston* v. *Charleston,* 2 Pet. 449; *Missouri Insurance Company* v. *Gehner,* 281 U. S. 313. Although nothing in the Constitution expressly gives the Congress the power to require priority for debts due the United States over debts due to private creditors, such priority was sustained, on the basis of the power to levy taxes, to coin money and to borrow. *United States* v. *Fisher,* 2 Cranch 358. Perhaps the most strik-

ing instance of the subordination of private interests to the borrowing power is afforded by the Legal Tender Acts themselves, which provided a means of meeting Government obligations. There is even greater justification for a measure which requires private creditors to accept currency in satisfaction of all claims, since to require payment of existing obligations in gold or its asserted value would necessitate similar payments on future obligations of the Government itself, and so would subject the taxpayers, in the event of a reduction in the gold content of the dollar, to a liability on Government bonds far greater than the amount received for them by the Government.

C. Power over Foreign Commerce and International Relations

Not only the fiscal powers of the National Government, but its power over foreign commerce and its sovereign power in international relations, afford adequate basis for dealing with gold clauses. As has been shown, the problems to which the recent monetary legislation has been directed are not merely national but are international in scope. The action of one country with respect to its currency is necessarily influenced by that of other nations. In some instances, national action is taken only after formal international conferences and agreements. In such cases it is important that this country be not embarrassed by want of legislative power commensurate with that of other nations in

negotiation or cooperation. Even where no formal international agreement is entered into, the protection of our international monetary position and our foreign trade requires that the United States be in as favorable a position with respect to legislative power as are other countries.

It has been pointed out *supra*, page 38, that on January 1, 1933, twenty-seven countries were off the gold standard and that the currencies of only Switzerland and Holland, apart from the United States, among the important commercial nations of the world, were not depreciated or devalued. It has also been pointed out, *supra*, page 68, that a number of countries, recognizing that obligations should be payable uniformly in legal tender upon the abandonment of the gold standard or revaluation of the gold unit, abrogated or suspended agreements to pay in gold coin.

But the problem of gold clauses is peculiarly American, because of the volume of such obligations executed and payable here. It is therefore particularly necessary for us that gold clauses should not stand in the way of measures, such as the requisitioning of gold coin, the suspension of the gold standard, and reduction in the content of the gold dollar, which serve to place this country in a comparable position in negotiation or competition with others.

The Proclamation of the President reducing the gold content of the dollar contained a finding that such action was necessary "to protect the foreign

commerce against the adverse effect of depreciated foreign currencies." In the past the Congress has frequently legislated with a view to the promotion of our foreign commerce. Acts have been passed providing for the incorporation of export associations, for their immunity from certain provisions of the anti-trust laws, and for the creation of banking associations to facilitate export trade. Sept. 19, 1922, c. 346, 42 Stat. 849, 15 U. S. C., sec. 141; April 10, 1918, c. 50, 40 Stat. 516, 15 U. S. C., sec. 61; Dec. 24, 1919, c. 18, 41 Stat. 378, 12 U. S. C., sec. 611. The Congress may likewise protect the interests of domestic commerce from the effect of imports produced under conditions of advantageous comparative costs. *Hampton & Co.* v. *United States,* 276 U. S. 394. No reason appears why the Congress may not also protect our foreign trade against the adverse effect of governmental action by other countries with respect to their currencies. And in its international relations the Congress possesses the full attributes of sovereignty. *Burnet* v. *Brooks,* 288 U. S. 378, 396; *Legal Tender Cases,* 12 Wall. 457, 555; *Fong Yue Ting* v. *United States,* 149 U. S. 698, 711. *Cf. McCulloch* v. *Maryland,* 4 Wheat. 316, 410; *Ruppert* v. *Caffey,* 251 U. S. 264.

It is established, in short, that the Congress may alter the content of the gold dollar; may assure the parity and equal legal-tender qualities of all forms of money; may protect the currency reserves; and,

through monetary measures, may protect the power of the Government to borrow, may safeguard our foreign trade and maintain our equality in international relations.

It was suggested in the court below, by way of answer, that in changing the gold content of the dollar the Congress legislated with a view to adjusting the debt burden of the country. This answer, even if it impeached the power of the Congres, would obviously apply to only a limited portion of the monetary legislation which the Joint Resolution was designed to safeguard. But the answer, even as so limited, does not have the effect which the respondents claim for it. It furnishes, instead, added reason for upholding the legislation.

First, it must be remembered that the suspension of the gold standard followed similar action by practically every great commercial nation of the world; that depreciation of the dollar on the foreign exchanges followed such suspension; and that the Proclamation of the President reducing the weight of the gold dollar brought the statutory value into substantial conformity with the new exchange ratios. Abrogation of gold clauses was, in this aspect, a recognition of the fact that if gold clauses were intended to grant a larger measure of recovery under such circumstances, enforcement of the clauses would result in an insupportable burden of debt, a burden which would have been caused by the action of private parties conditioned upon, and

so obstructing, the action of the Government with respect to the gold value of the dollar. The situation presented by the debtor in the case at bar is but a striking instance of the extent to which the burden of debt would be increased by operation of the gold clause.

Second, while it is true that a decrease in the content of the gold dollar was expected to restore the price level to a point more nearly approaching the level which prevailed before the recent collapse, such an exercise of the monetary power was clearly within the authority of the Congress. In exercising its established power over the content of the dollar, the Congress, it will hardly be denied, was justified in doing so with a view to the needs of the country. The Congress has frequently enacted and this Court sustained legislation passed pursuant to the delegated powers and embodying a national policy. Such exercises of authority have been common under the taxing power, the commerce power, the postal power, and the fiscal powers. *Ex parte Jackson*, 96 U. S. 727; *In re Rapier*, 143 U.S. 110; *Lottery Case*, 188 U. S. 321; *Mc Cray* v. *United States*, 195 U. S. 27; *Hipolite Egg Co.* v. *United Sstates*, 220 U. S. 45; *Hoke* v. *United States*, 227 U. S. 308; *Billings* v. *United States*, 232 U. S. 261; *Badders* v. *United States*, 240 U. S. 391; and *Hampton & Co.* v. *United States*, 276 U. S. 394.

That the policy of the Congress may have in view the level of prices does not alter the case. Such a

policy has in fact been pursued by several means in the past. The powers of the Federal Reserve Board, particularly in making open-market purchases and sales of Government bonds and in setting rediscount rates for the various Reserve Banks, have and are intended to have an effect upon credit and prices; yet such authority is unchallenged. The statutory requirements for reserves against member bank deposits and against note issues, which the Congress may change from time to time, have an important bearing on the volume of credit and currency. The authority of the Congress to direct the issue of additional currency is unquestioned; yet it might be expected that the effect would be an increase in commodity prices. The protective tariff, which also has and is intended to have an effect upon commodity prices, has been expressly approved, even though it affects commodity prices with more particularity. Insofar as the recent monetary legislation was expected to have an effect on prices, it was not an effort to fix the prices of commodities but rather to enable the normal factors influencing commodity prices to readjust themselves untrammeled by the abnormal price of gold itself.

D. Power over contracts

The power of the Congress to effectuate its legitimate objectives need not be defeated by a supposed necessity of permitting agreements whose purpose and effect would be to frustrate and ob-

struct such power. The Congress may counteract the effect of obstructive agreements and may do so by declaring such agreements unenforceable. Similar power has long and frequently been exercised by the Congress over private agreements which tend substantially to burden interstate commerce or to obstruct the regulation thereof. This Court has stated in vigorous terms, in *Addyston Pipe & Steel Company* v. *United States*, 175 U. S. 211, 229–230, the reasons why the power of Congress includes not only the supremacy of Federal over inconsistent State legislation but extends also to the regulation of obstructive private agreements:

> If certain kinds of private contracts do directly, as already stated, limit or restrain, and hence regulate interstate commerce, *why should not the power of Congress reach those contracts just the same as if the legislation of some State had enacted the provisions contained in them?* The private contracts may in truth be as far-reaching in their effect upon interstate commerce as would the legislation of a single State of the same character. * * * The power of Congress over this subject seems to us much more important and necessary than the liberty of the citizen to enter into contracts of the nature above mentioned, free from the control of Congress, because the direct results of such contracts might be the regulation of commerce among the States, possibly

quite as effectually as if a State had passed a statute of like tenor as the contract.

The liberty of contract in such case would be nothing more than the liberty of doing that which would result in the regulation, to some extent, of a subject which from its general and great importance has been granted to Congress as the proper representative of the nation at large. * * * (Italics ours.)

See also *Chicago, etc. R. R.* v. *McGuire*, 219 U. S. 549, 567; *Atlantic Coast Line R. R.* v. *Riverside Mills*, 219 U. S. 186, 201; *Highland* v. *Russell Car & Snow Plow Co.*, 279 U. S. 253; *United States* v. *Thompson*, *Fed. Cas.* 16489.

In regulating the value of money, no less than in regulating interstate commerce, it is essential that Congress have power to render private agreements illegal where they obstruct or usurp the exercise of Congressional power. It is no answer to suggest that the Congress might exercise unlimited authority over contracts which are payable in money, or over all contracts, on the theory that they affect the value of commodities and so affect the value of money. The question in the present case should not be obscured by supposing the enactment of laws having some fanciful relation to the monetary power of the Congress, because of some remote effect which they may have upon the value of money. The present case involves a type of contract which interferes no less directly and substantially with the regulation of the value of money than do mo-

nopolistic agreements or unreasonable rate contracts with the regulation of interstate commerce. Indeed, it would be difficult to imagine a class of contracts which more directly and substantially affect the regulation of the value of money than do gold clauses of the kind in the case at bar.

This Court has never expressed doubt that gold clauses may be superseded by an Act of Congress. The only reason why such clauses continued to be valid after the *Legal Tender Cases* is that the Legal Tender Acts were construed not to apply to them.[32] Justice Bradley, who differed from the majority of the Court on the question of statutory construction, stated succinctly the reasons why gold clause

[32] It may be noted that the rule of construction adopted in *Bronson* v. *Rodes* was not universally approved. Justice Miller, in his dissent in that case, stated that the decision was opposed "to the decisions of the highest courts in fifteen States in the Union, being all that have passed upon the subject" (7 Wall. 229, 258). In the following cases, state courts not only construed the Legal Tender Acts to make gold-coin obligations payable in "greenbacks" but also either expressly or by implication regarded application of the Acts to pre-existing gold-clause contracts as constitutional: *Reynolds* v. *The Bank of Indiana*, 18 Ind. 467; *Thayer* v. *Hedges*, 23 Ind. 141; *Warnibold* v. *Schlicting*, 16 Iowa 243; *Murray* v. *Gale*, 52 Barb. (N. Y.) 427; *Rodes* v. *Bronson*, 34 N. Y. 649; *Shoenberger* v. *Watts*, 5 Phila. 51; *Shollenberger* v. *Brinton*, 52 Pa. 9; *Mervine* v. *Sailor*, *Davis* v. *Burton*, *Sandford* v. *Hays*, *Graham* v. *Marshall*, *Laughlin* v. *Harvey*, all in 52 Pa. St. 9; *Johnson's Administrator* v. *Vickers*, 1 Duv. (62 Ky.) 266; *Wood* v. *Bullens*, 6 Allen (88 Mass.) 516; *Henderson* v. *McPike*, 35 Mo. 255.

obligations could be validly subjected to such legislation (12 Wall. 566–567):

> It follows as a corollary from these views, that it makes no difference in the principle of the thing, that the contract of the debtor is a specific engagement, in terms, to pay gold or silver money, or to pay in specie. So long as the money of the country, in whatever terms described, is in contemplation of the parties, it is the object of the legal-tender laws to make the credit of the government a lawful substitute therefor. * * *
>
> Hence I differ from my brethren in the decision of one of the cases now before the court, to wit, the case of *Tribilcock* v. *Wilson*, in which the promise (made in June, 1861), was to pay, one year after date, the sum of nine hundred dollars with ten-per-cent. interest from date, payable in specie. Of course this difference arises from the different construction given to the legal tender acts. *I do not understand the majority of the court to decide that an act so drawn as to embrace, in terms, contracts payable in specie, would not be constitutional. Such a decision would completely nullify the power claimed for the government. For it would be very easy, by the use of one or two additional words, to make all contracts payable in specie.* (Italics ours.)

The later history of our monetary legislation has served to confirm what was there said concerning the effect of gold clauses; and the later decisions

of this Court have confirmed the authority of the Congress to declare such agreements unenforceable.

It remains now to discuss the effect of the Fifth Amendment on the application of the Resolution to preexisting obligations.

4. No constitutional limitations are infringed by the resolution

The due process clause of the Fifth Amendment, as applied to legislative action, requires only that the action be not arbitrary or capricious, and that there must be some reasonable relation between it and the legitimate powers of the Congress. The standard of due process has thus been laid down by this Court, in *Ling Su Fan* v. *United States,* 218 U. S. 302, 311:

> To justify the exercise of such a power it is only necessary that it shall appear that the means are reasonably adapted to conserve the general public interest and are not an arbitrary interference with private rights of contract or property. * * *

The familiar standard was repeated in *Nebbia* v. *New York,* 291 U. S. 502, 525:

> And the guaranty of due process, as has often been held, demands only that the law shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained. * * *

Cases like *Adair* v. *United States,* 208 U. S. 161, and *Adkins* v. *Children's Hospital,* 261 U. S. 525, relied on below by the respondents, have no direct

application to the case at bar. In those cases, which involved legislative restrictions on liberty of contract, and the question on which the Court divided was whether the restriction was a reasonable means of carrying out the powers of the Congress, in the one case the power over interstate commerce, and in the other the police power over the District of Columbia. The relation of the Joint Resolution to the powers of the Congress, and particularly to the monetary legislation of 1933–1934, has been demonstrated, we believe, in the preceding sections of this brief. The due process clause does not invalidate a law of the Congress which is in accord with the judgment of reasonable men that the abrogation of gold clauses was necessary in order effectively to regulate the value of money. The wisdom of the policy adopted will not, of course, be questioned by the courts. *Hamilton* v. *Kentucky Distilleries Warehouse Co.*, 251 U. S. 146, 161; *Williams* v. *Mayor of Baltimore*, 289 U. S. 36, 42; *Home Building & Loan Assn.* v. *Blaisdell*, 290 U. S. 398; *Nebbia* v. *New York*, 291 U. S. 502.

The Joint Resolution of the Congress raises no question of the taking of property without compensation, within the meaning of the Fifth Amendment. Therefore, cases like *Monongahela Navigation Co.* v. *United States*, 148 U. S. 312, relied on below by the respondents, have no application. Such cases involve an appropriation by the Government, for its own use, of property belonging to private par-

ties. Compare *Omnia Commercial Co.* v. *United States,* 261 U. S. 502, 513.

The respondents object that the Congress may not take property from one person and give it to another, or directly alter contracts between private parties. The answer to this objection is that there is no taking by the Congress from one person and giving to another, but at most a change in contract rights resulting from an exercise of the delegated powers of the Congress; that such changes have been uniformly upheld when effected by the Congress in the exercise of its paramount powers (see *Lynch* v. *United States,* 292 U. S. 571); and that the Joint Resolution, as has been already established, constitutes an exercise of such power.

Nothing in *Lynch* v. *United States,* 292 U. S. 571, is opposed to these principles. The opinion in that case supports the conclusions which have just been stated. This Court there held invalid a portion of the Economy Act of 1933, which repealed prior laws granting war risk insurance, on the ground that the Congress could destroy existing contract rights against the United States only in the exercise of its police power or other paramount power, and that such exercise was not apparent or even claimed in the case before the Court. Mr. Justice Brandeis, for a unanimous court, said (p. 579):

> As Congress had the power to authorize the Bureau of War Risk Insurance to issue

> them, the due process clause prohibits the United States from annulling them, *unless, indeed, the action taken falls within the federal police power or some other paramount power.*
>
> The Solicitor General does not suggest either in brief or argument, that there were supervening conditions which authorized Congress to abrogate these contracts in the exercise of the police or any other power. * * * (Italics ours.)

In the case at bar, there were supervening conditions, and other legislation to meet those conditions, making the Resolution imperative. It was essential that the declaration of invalidity of gold clauses in private obligations be accompanied by a similar declaration as to Government obligations. See pages 58–62, *supra.*

Even the States, which are specifically forbidden to impair the obligations of contracts, may interfere with or abrogate existing contracts in the exercise of sovereign powers. Laws prohibiting lotteries, the sale of intoxicating liquors, or the maintenance of nuisances, zoning laws, laws regulating rates and services of utilities, and numerous other enactments, may all have the effect of destroying contracts, but they are none the less valid.[33]

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[33] *Long Island Water Supply Co.* v. *Brooklyn*, 166 U. S. 685, 692; *Manigault* v. *Springs*, 199 U. S. 473, 480; *Atlantic Coast Line R. R. Co.* v. *Goldsboro*, 232 U. S. 548, 558; *Chicago & Alton R. R. Co.* v. *Tranbarger*, 238 U. S. 67, 76–77; *Union Dry Goods Co.* v. *Georgia Pub. Serv. Corp.*, 248 U. S.

In *Home Building & Loan Assn.* v. *Blaisdell,* 290 U. S. 398, 435, Mr. Chief Justice Hughes thus summarized this power of the States to affect existing contracts:

> Not only are existing laws read into contracts in order to fix obligations as between the parties, but the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order. * * *

Even greater power, it has been suggested, is reserved to the Congress to affect contracts, since there is no prohibition in the Constitution against impairment by the national legislature. *Legal Tender Cases,* 12 Wall. 457, 550; *Mitchell* v. *Clark,* 110 U. S. 633; *Evans-Snider-Buel Co.* v. *McFadden,* 105 Fed. 293, 297; *United States* v. *United Shoe Mach. Co.,* 264 Fed. 138, 152.

It is clear, at all events, that no exercise of a paramount power of the Congress has been invalidated because it interfered with or destroyed existing contracts. Numerous Acts of Congress having such purpose and effect have been sustained. A familiar example is Federal bankruptcy legislation. See *Hanover National Bank* v. *Moyses,* 186 U. S. 181.

372, 376; *Producers Transp. Co.* v. *R. R. Comm. of California,* 251 U. S. 228, 232; *Levy Leasing Co.* v. *Siegel,* 258 U. S. 242; *Sutter Butte Canal Co.* v. *Railroad Comm.,* 279 U. S. 125, 138; *Stephenson* v. *Binford,* 287 U. S. 251, 276; *St. Paul Fire & Marine Ins Co.* v. *Eldracher,* 33 F. (2d) 675 (C. C. A. 8th), cert. den., 280 U. S. 604.

But other legislation may also affect or destroy existing contracts. Thus in *Louisville & Nashville Railroad* v. *Mottley,* 219 U. S. 467, a law was upheld, as applied to prior contracts, which prohibited the use of free passes on interstate railroads. In that case, the pass, which had been given a number of years before, was not a mere gift but was in the nature of a satisfaction of a disputed claim against the railroad for personal injury. Hence, there was a clear abrogation of an existing contract by Federal law.

In *Philadelphia, B. & W. R. R. Co.* v. *Schubert,* 224 U. S. 603, the Court upheld the power of Congress in the Employers' Liability Acts to abrogate existing contracts making receipt of benefits under a company relief plan a bar to an action for damages. In that case, the plaintiff became a contributor to such a fund before the enactment of the Act of Congress, and received a benefit from the fund after the Act became effective. In holding that he was not barred from bringing action for damages, in the face of the prior agreement, the Court, through Mr. Justice Hughes, said (pp. 613–614):

> The power of Congress, in its regulation of interstate commerce, and of commerce in the District of Columbia and in the Territories, to impose this liability, was not fettered by the necessity of maintaining existing arrangements and stipulations which would conflict with the execution of its policy. To subordinate the exercise of the Federal au-

> thority to the continuing operation of previous contracts, would be to place, to this extent, the regulation of interstate commerce in the hands of private individuals, and to withdraw from the control of Congress so much of the field as they might choose by prophetic discernment to bring within the range of their agreements. The Constitution recognizes no such limitation. It is of the essence of the delegated power of regulation that, within its sphere, Congress should be able to establish uniform rules, immediately obligatory, which as to future action should transcend all inconsistent provisions. *Prior arrangements were necessarily subject to this paramount authority.* (Italics ours.)

In *Calhoun* v. *Massie,* 253 U. S. 170, this Court upheld an Act of Congress limiting the fees which could be charged by attorneys representing claimants of Civil War benefits. In that case the attorney's contract had been made and the major part of his services had been performed before the Act was passed. The Act, nevertheless, was held valid as applied to that contract.

And in *De Laval Steam Turbine Co.* v. *United States,* 284 U. S. 61, it was held that existing contracts are subject to an Act authorizing their requisition by the Government.

The power of the Congress may be exercised in such a way that even contracts between private parties and a State may be abrogated. Thus in *New York* v. *United States,* 257 U. S. 591, this

Court upheld an order of the Interstate Commerce Commission increasing an intrastate rate even though the state charter of the railroad provided that a lesser rate should be the maximum charged by the company. See also *Omnia Commercial Co.* v. *United States,* 261 U. S. 502; *Scranton* v. *Wheeler,* 179 U. S. 141; *Union Bridge Co.* v. *United States,* 204 U. S. 364.

In *Dillingham* v. *McLaughlin,* 264 U. S. 370, 374, Justice Holmes tersely said:

> The operation of reasonable laws for the protection of the public cannot be headed off by making contracts reaching into the future.

And in the case of *Norman* v. *Baltimore & Ohio R. Co.* (265 N. Y. 37, 191 N. E. 726, 728; No. 270, (this term) Chief Judge Pound stated:

> All arrangements for payment in money in the future are necessarily under the paramount authority of the political sovereign delegated powers of Congress. The courts should not interfere with the economic policies adopted by Congress, if such powers are vested in that body. * * * If the gold clause in contracts is an interference with the ability of the government to accomplish legitimate results it may well be urged that Congress may remove such interference without regard to consequences.

"But", said District Judge Faris, in the court below (R. p. 120), "learned counsel for intervenors, in both their oral and printed arguments, do insist, most ably and strenuously, that no public policy is

at all involved in a matter of private contract between a corporation and individual bondholders as here", and added:

> I submit with deference, that they have in this assumption fallen into grave error, in my opinion. Their conclusions upon the point are tantamount to the assertion, that any two members of our national compact bottomed as it is, on representative government may flout and disobey both the organic law and the mandate of their government, and arrogate to themselves a power which, as I labor to show, has been solemnly committed to the Congress alone. If this may be done by two contracting parties in any given contract, I see no reason why it may not be done in every contract; with at least, the theoretical result, to turn business and commerce back to ancient barter, or swapping of commodities. * * * Obviously, no two persons can by a private contract directly repeal a law passed by the Congress, and so by the same token they cannot do so by indirection.

These principles have been vigorously reaffirmed by this Court in a recent case. In *Sproles* v. *Binford*, 286 U. S. 374, Mr. Chief Justice Hughes said (pp. 390–391):

> With respect to the power of Congress in the regulation of interstate commerce, this Court has had frequent occasion to observe that *it is not fettered by the necessity of maintaining existing arrangements which would conflict with the execution of its policy,*

> as such a restriction would place the regulation of interstate commerce in the hands of private individuals and *withdraw from the control of Congress so much of the field as they might choose by prophetic discernment to bring within the range of their agreements.* (Italics ours.)

The power over the currency must be no less free than the power over interstate commerce from the fetters of "existing arrangements". This is particularly true where, as in the case of clauses calling for gold coin of a particular standard, the existing arrangements were designed to frustrate future legislative action. The "prophetic discernment" of private individuals cannot be allowed in such a case to defeat the legitimate policy of the Congress.

5. The Joint Resolution is controlling in the case at bar

The Resolution applies in terms to every "obligation payable in money of the United States." The respondents do not deny that the bonds in the present case constitute such obligations. The fact that the bonds contain a gold clause does not make them any the less money obligations. As was said in *Thompson* v. *Butler,* 95 U. S. 694, 697, a gold-clause obligation "is a contract to pay money, and none the less so because it designates for payment one of the two kinds of money which the law has made a legal tender in discharge of money obligations." To regard gold-clause obligations as other than money contracts would throw grave doubt

upon their negotiable character, since the Negotiable Instruments Law requires that such instruments be payable in "a sum certain in money".[34]

The effect of the Resolution is that the bonds in the present case may be discharged by payment of their face amount in lawful money. The application of the Resolution is not affected by the fact that the bonds matured on May 1, 1933. The Resolution provides for the discharge of every money obligation by such payment, dollar for dollar, irrespective of agreements to pay in gold coin or the value thereof. The obligation continued, after May 1, 1933, to be one to pay according to the face of the bonds; it did not become at that time one to pay a different amount as damages for breach. Compare *Hicks* v. *Guinness,* 269 U. S. 71, with *Deutsche Bank Filiale Nurnberg* v. *Humphrey,* 272 U. S. 517.

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[34] The bonds and the mortgage indenture under which the bonds were issued abound with evidence that the obligation of the Railway Company is an "obligation payable in money of the United States." Article First of the indenture provides that "the amount of the bonds * * * is limited so that there shall never at any time be outstanding under this indenture bonds having an aggregate principal sum exceeding Fifty Million Dollars ($50,000,000)." In Article Eleventh it is provided that the mortgage shall be discharged when the company shall have "paid the whole amount of the principal moneys and interest due upon all of the bonds." Articles Third and Thirteenth assume that the coupon bonds and the coupons are negotiable. Article Third makes the coupon and registered bonds exchangeable, dollar for dollar.

But even if it be assumed that the obligation became, on May 1, 1933, one to pay as damages a liquidated sum greater than the face amount of the bonds, the Joint Resolution is none the less applicable. The Resolution not only provides the manner in which money obligations shall be discharged, but declares gold clause provisions to be against public policy. It will not be denied that in substance the claim of the Respondents is based upon gold clause obligations, whether or not the fact of maturity alters the technical obligation. The courts will not enforce claims based upon agreements which have been declared by the legislature to be contrary to public policy. Compare *Oscanyan* v. *Arms Co.*, 103 U. S. 261; *Ewell* v. *Daggs*, 108 U. S. 143; *Calhoun* v. *Massie*, 253 U. S. 170; *Hartford Fire Ins. Co.* v. *Chicago, M. & St. P. Ry. Co.*, 62 Fed. 904, 910.

We do not understand the respondents to deny the applicability of the Joint Resolution.

II

Independently of the Joint Resolution there is no basis for allowing the respondents' claim in other than the face amount of the bonds

1. Analysis of the argument

We have maintained thus far that the Joint Resolution of June 5, 1933, is constitutional and controlling in the case at bar. There is, however, an independent basis for holding that the obligations in the bonds can be satisfied by payment of their stated dollar amount in legal tender. Re-

gardless of the constitutionality or the applicability of the Joint Resolution, it is our contention that the Congressional Acts and the executive and other administrative orders and regulations relating to the ownership, use, and transfer of gold coin, gold bullion, and gold certificates have so affected the gold market that there is no justification for computing the amount of the respondents' claim on the bonds at more than their face value. Thus the results achieved directly by the Joint Resolution follow indirectly from the effect of the gold orders upon the availability and market value of gold.

It is clear that the gold clause involved in the case at bar is a money obligation and not a commodity obligation.[35] Upon the assumption that the clause is a money obligation, two general interpretations are possible: It may call (a) simply for payment in gold coin, or (b) for payment in gold coin or in the alternative for payment in currency of an "equivalent" amount.

In our view, for the reasons stated *infra* pages 114 to 123, the first interpretation is the proper one; but upon either interpretation the respondents' claim is no greater than the face amount of the bonds.

If, as we believe, the clause is a single obligation to pay in gold coin, such a mode of payment would be excused outside of the bankruptcy proceedings because of supervening illegality and impossibility,

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[35] See page 96 and note 34, *supra*.

and recovery would be limited to the face amount of the bonds, upon principles of partial enforcement or quasi-contractual restitution. The claim in bankruptcy should be no greater. Moreover, even if payment were made in gold coin, the creditors could not realize upon such coin more than the nominal amount thereof in any legal tender money; consequently, to allow a greater claim in these proceedings would be to permit greater recovery as a result of breach than as a result of performance.

If, however, the court should be of the opinion that there must be implied in the clause a provision for an alternative payment in some equivalent of the stipulated gold coin, the respondents' claim is equally unsound. Equivalence should be defined in terms of the amount which a gold clause creditor could realize upon the stipulated gold coin; and this, as has just been stated, has at no time been greater than the nominal amount of the debt. But even if some other concept of equivalence is adopted, such as the statutory price of gold, having no relation to the amount which a gold clause creditor could realize upon gold coin, the result is the same. Under this last interpretation the question of the date as of which the equivalent should be determined becomes controlling. We believe that the proper date is May 1, 1933, the due date of the bonds, and at that time any legal tender money was, dollar for dollar, the equivalent in this country of gold coin, no matter how it was acquired, and no

matter whether equivalence is determined by statutory price or by the price available in the restricted market then prevailing.

2. Analysis of the gold market as affected by Congressional Acts and by the gold orders

The gold market was first affected by the Presidential Proclamation of March 6, 1933 (Appendix, p. 2), which declared the "bank holiday." [36] The Proclamation forbade banks to export, to pay out, or to permit the withdrawal or transfer of any gold coin, gold bullion, or gold certificates, except as prescribed by the Secretary of the Treasury. Orders of the Secretary of the Treasury (Appendix, p. 5), approved by the President and issued on the same date, directed the Treasurer of the United States and the Director of the Mint to permit the withdrawal of gold in any form only under license issued by the Secretary of the Treasury. These steps were confirmed by the Act of March 9, 1933 (Appendix, p. 7). An Executive Order of March 10, 1933 (Appendix, p. 11), authorized the opening of banks under license but provided that the banks should continue the restrictions relating to the paying out of gold "except as authorized by the Secretary of the Treasury." Regulations issued by the Secretary of the Treasury pursuant to the author-

[36] The "bank holiday", declared for three days by the Proclamation of March 6, was continued under the authority of the Act of March 9, 1933, "until further proclamation by the President." A proclamation officially terminating the "bank holiday" has not yet been issued.

ity conferred upon him by the President's Orders relaxed the restrictions specified therein in one respect only: On March 13, 1933, Federal Reserve banks were authorized (Appendix, p. 13) to deliver limited amounts of gold for legitimate and customary use in industry, profession, and art upon receipt of affidavits stating the need of the gold for such use. Briefly, therefore, the effect of the Orders of the President and regulations of the Secretary of the Treasury was that gold could not be withdrawn in any form from banks, the United States Treasury, or the United States Mints and Assay Offices except for industrial, professional, or artistic purposes; and that this and other gold in circulation could not be exported. There were no restrictions upon the ownership or free circulation within the country of gold coin, gold bullion, and gold certificates already outside the banks.

On April 5, 1933, the President issued an Order (Appendix, p. 14) forbidding the hoarding of gold coin, gold bullion, and gold certificates. By the regulations contained in this Order all persons were required to deliver to appropriate banks on or before May 1 all gold coin, gold bullion, and gold certificates, exceeding $100 in aggregate amount, "now owned by them or coming into their ownership on or before April 28, 1933", and thereafter they were required to deliver such gold within three days after receipt thereof. Payment for such gold was authorized in "an equivalent amount of any other form of coin or currency, coined or

issued under the laws of the United States." Provision was made in the Order for exceptions, under license, to this requisition of gold for (1) gold required for industrial, professional, or artistic uses, and (2) "gold coin and gold bullion licensed for other proper transactions (not involving hoarding)." [37] This Order should be considered together with the Executive Order issued on April 20, 1933 (Appendix, p. 18), which prohibited the export of gold but provided for export under license, "with the approval of the President for transactions which [the Secretary of the Treasury] may deem necessary to promote the public interest." [38]

[37] Similar exceptions, for purposes unrelated to the instant case, were made for (1) "rare coins", and (2) "gold coin and bullion, earmarked or held in trust for a recognized foreign government, for a foreign central bank, or for the Bank of International Settlements."

[38] Similar exceptions, for purposes unrelated to the instant case, were made for (1) gold coin and bullion "earmarked or held in trust" in the same manner as described in the preceding footnote; (2) "gold and bullion imported for re-export or in reasonable amounts for usual trade requirements of refiners importing gold bearing materials under agreement to export gold": (3) "gold coin and bullion actually required for the fulfillment of any contract entered into prior to the date of this order by an applicant who, in obedience to the Executive Order of April 5, 1933, has delivered gold coin, gold bullion, or gold certificates." This last exception is deemed inapplicable to the instant case, since there is no suggestion in the record or argument that the respondents were in a position to avail themselves of it. Furthermore, it has no bearing on the existence of a free gold market.

That these exceptions to the April Orders were not intended to modify the strictness of the original Orders as they applied to gold for monetary purposes was demonstrated by a ruling of the Secretary of the Treasury on April 28, 1933 (Appendix, p. 21). To forestall applications in cases in which licenses would not be granted, the Secretary ruled that no licenses would be granted under the Executive Order of April 5, 1933, "for the purpose of meeting maturing obligations calling for payment in gold coin or bullion, within the United States or elsewhere, * * *."[39] The effect of this ruling and the regulations (Appendix, p. 22) issued on April 29, 1933, pursuant to the Executive Orders, was to delimit "proper transactions" in the Order of April 5 and generally to forbid ownership or circulation of gold either as coin or as bullion except as a commodity for industrial, professional, or artistic uses. The export of gold was similarly restricted.[40]

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[39] The ruling continues: "* * * except where such applicants have surrendered gold coin, gold bullion or gold certificates in obedience to the Executive Order of April 5, 1933." The irrelevancy of such an exception has already been discussed in the preceding footnote.

[40] The ruling of April 28, 1933, did not by its terms apply to the Order of April 20. But in view of the provision of the ruling prohibiting the withdrawal of gold for payment "within the United States *or elsewhere*", it is unlikely that the export of gold to meet gold-clause obligations would be licensed under the exception in the Order for transactions "necessary to promote the public interest."

Under the Order of April 5, 1933, any person acquiring gold after May 1 was required, subject to the exceptions noted above, to deliver such gold to a Federal Reserve bank "within three days after receipt thereof", unless such delivery involved "extraordinary hardship or difficulty", in which case the Secretary of the Treasury might "in his discretion, extend the time within which such delivery must be made." See Sections 3 and 7 of the Executive Order of April 5, 1933. This requirement placed a duty upon the persons [41] which was performed only by delivery of gold to a Federal Reserve bank. The duty could not be avoided by delivery to a third person. Similarly, although the President did not specifically avail himself of the power contained in the Act of March 9, 1933, to prohbit the melting of gold, the duty to deliver could not be avoided by a change in the form of gold coin. The only gold which circulated lawfully was gold held and sold as a commodity for industrial, professional, or artistic uses. Gold for this purpose could be acquired at the legal rate of

[41] "The Executive Order of April 5, 1933, is in terms made applicable only to the *owners* of gold coin, gold bullion, and gold certificates * * *. The Executive Order therefore operates *in personam*, not *in rem*, upon the persons designated in the Order rather than upon the gold required to be delivered by the Order." Opinion of the Attorney General of the United States, *Executive Order Prohibiting the Hoarding of Gold Coin, Gold Bullion, and Gold Certificates*, May 25, 1933.

$20.67 an ounce from the Federal Reserve banks.[42] The scrap arising from this and other gold was sold to the United States Mints at the same rate.

On and after May 1, therefore, as a practical matter, the export, ownership, and free circulation of gold coin and gold bullion was restricted in this country to gold genuinely held as a commodity for industrial, professional, or artistic uses. There was no market for gold for monetary purposes.[43]

On May 1, 1933, when the bonds in the instant case matured by their terms, the price of gold in terms of dollars had risen slightly in the foreign free markets, and thereafter continued to rise. This, however, did not affect the price of domestic gold in any respect. Gold coin and certificates, whether offered voluntarily or pursuant to the requisition Orders, and whether imported or held in the United States, were paid for, dollar for dollar, in lawful money of the United States by the Federal Reserve banks and by the United States Treasury and Mints; and gold bullion was like-

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[42] Regulations of April 29, 1933, Art. II, sec. 3, Art. V, sec. 4; see Appendix, pp. 23, 24.

[43] The Treasury Statement of May 26, 1933, *supra*, p. 27, pointed out that "gold is not now paid, nor is it available for payment, upon public or private debts." The Report of the Senate Committee on Banking and Currency, dated May 27, 1933, on S. J. Res. 56 stated: "By the Emergency Banking Act and the existing Executive Orders, gold is not now paid, or obtainable for payment, on obligations public or private."

wise paid for in lawful money at the statutory rate of $20.67 an ounce, whether or not required to be delivered. Similarly, gold bullion, no matter how acquired, was sold to licensees at $20.67 an ounce. In consequence, the same price prevailed in the secondary markets. The export of gold to profitable foreign markets was, of course, impossible by virtue of the restrictions on gold export.

On August 28, 1933, the Executive Orders of April 5 and April 20, were superseded by an Executive Order (Appendix, p. 40) which for the most part carried over the provisions of those Orders, but in addition provided that gold might be acquired in the United States only under license and only from sources specified by the Secretary of the Treasury. Licenses to acquire gold could be issued (1) for legitimate and customary use in industry, profession, or art; (2) for export after such export had been licensed pursuant to another provision of the Order.[44] Licenses to acquire gold for export could be issued for purposes similar to those specified in the Order of April 20, 1933, including the export of gold, "with the approval of the President for transactions which the Secretary of the Treasury may deem necessary to promote the public

[44] A similar exception for a purpose unrelated to the instant case was made for gold for a "necessary and lawful transaction" when the applicant for the license had, since March 9, 1933, "surrendered an equal amount of gold coin, gold bullion or gold certificates." See *supra*, page 103, note 38.

interest." It is apparent that the licensing provisions left no possibility for the acquisition of gold in any form for domestic use in meeting maturing obligations calling for payment in gold coin or bullion, or for circulation in general; and the approval of the Joint Resolution on June 5, 1933, is sufficient indication that the export of gold coin for such purposes would not be deemed "necessary to promote the public interest."

The Order of August 28, 1933, dealt also with the holding and ownership of gold. It provided that no person could hold or own any gold coin, gold bullion, or gold certificates except "under a license heretofore granted" or under a license provided for in the Order, after thirty days from the date of the Order.[45] Licenses to hold gold could be issued (1) for legitimate and customary use in industry, profession, or art, or (2) when the Secretary of the Treasury was satisfied that such gold was "required by the person owning the same for a necessary and lawful transaction for which currency other than gold certificates cannot be used."[46]

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[45] No licenses were required for certain specified purposes, unrelated to the instant case; namely, for (1) gold "in an amount not exceeding in the aggregate $100 belonging to any one person"; (2) rare coins; and (3) gold owned by Federal Reserve banks.

[46] Similar exceptions for purposes unrelated to the instant case were made for (1) gold "earmarked or held in trust" since before April 20, 1933, for a recognized foreign government, or foreign central bank or the Bank for International Settlements; and (2) gold "imported for reexport or held pending action upon application for export licenses."

It has earlier been demonstrated that licenses under prior Orders would not be granted to permit the circulation of gold, and after the approval of the Joint Resolution of June 5, 1933, such a purpose would not be deemed to be "necessary and lawful." Although thirty days from the date of the Order were allowed to elapse before the penalty provisions attached to the holding of gold, this did not enable gold to circulate. The thirty-day period did not apply to gold unlawfully held under prior Orders. Furthermore, persons were allowed to acquire gold only under a license, from persons holding it lawfully during the thirty days and then only if acquisition from such persons was authorized in the licenses. Payment or transfer of gold for monetary purposes during this period would therefore be out of the question. Even if gold coin lawfully held during this period were melted down, the bullion could not be transferred, and its use at the expiration of the period in industry, profession, and art would be licensed only if the holder of the bullion could show "legitimate and customary use" in his business.

On August 28, 1933, therefore, the acquisition, export, ownership, and free circulation of gold coin, bullion, and certificates were effectively restricted. A free domestic market for gold was nonexistent under this Order as under the April Orders, and domestic gold could still not be sold in the world markets.

The Executive Order of August 29, 1933, (Appendix, p. 49), indicated a departure in a restricted sphere from the stationary price described above. The Secretary of the Treasury was authorized "to receive on consignment" newly mined domestic gold (1) for sale "to persons licensed to acquire gold for use in the arts, industries, or professions"; and (2) for sale "to foreign purchasers." These sales of newly mined gold were to be made at a price "equal to the best price obtainable in the free gold markets of the world." Gold coin and certificates when surrendered were still being paid for, dollar for dollar, in lawful money of the United States; and gold bullion was likewise paid for at $20.67 an ounce. Similarly, gold coin continued to be sold by the United States and the Federal Reserve banks to licensees, dollar for dollar, and bullion at $20.67.[47]

On November 16, 1933, Judge Woolsey decided in the case of *Campbell* v. *Chase National Bank,* 5

[47] On October 25, 1933, the Executive Order of August 29 was replaced by a new Executive Order (Appendix, p. 78) which authorized the Mints to receive newly mined gold on consignment for the Reconstruction Finance Corporation, and authorized that Corporation to acquire gold so received and to dispose of such gold. The Reconstruction Finance Corporation on October 26 issued a circular offering for subscription notes of the Corporation for which such gold would be received at rates to be announced from time to time. By disposing of notes received for their gold, miners were in effect enabled to receive an amount in excess of the statutory rate of $20.67, but this did not affect the market price of gold not eligible for delivery for Reconstruction Finance Corporation notes.

Fed. Supp. 156, that Section 5 of the Order of August 28, which forbade the holding of gold, was not within the mandate of Section 2 of the Act of March 9, 1933, as that Act conferred authority for such an Order upon the Secretary of the Treasury and not upon the President. The relevance of this decision will later be discussed. It is sufficient to state at this point that the section of the Order dealing with the *holding* of gold and not the section dealing with the *acquisition or export* of gold was challenged. The gold market is effectively destroyed even if chance holdings of gold are left untouched."[48]

The Executive Orders of April 5 and August 28, with respect to the acquisition and holding of gold, were issued pursuant to Section 2 of the Emergency Banking Act of March 9, 1933. On December 28, 1933, the Secretary of the Treasury issued an Order (Appendix, p. 79) pursuant to Section 3 of that Act. This Order required "Every person subject to the jurisdiction of the United States forthwith to pay and deliver to the Treasurer of the United States all gold coin, gold bullion, and gold certificates situated in the United States

[48] Even if the decision were extended by analogy to the April Orders, it should be noted that the present enquiry is a factual one, concerning the existence of a gold market, which a decision can affect only prospectively. The uncontested provisions of the Order of August 28 (which alone was in effect on November 16, 1933) were sufficient to destroy a free gold market.

owned by such person." Exceptions analogous to those contained in the April 5 and August 28 Orders were allowed, although the $100 exception was not continued. The Order provided for compensation, following the language of the statute, in "an equivalent amount of any form of coin and currency, coined or issued under the laws of the United States." This Order answered the objections of Judge Woolsey in the *Campbell* case. The penalty for violations of Orders under Section 3 of the Emergency Banking Act was twice the value of the gold. In an Order of January 15, 1934 (Appendix, p. 93), the Secretary of the Treasury expressly reserved the right to deduct from the amount payable for any gold presented after the final date for surrender, January 17, 1934, an amount toward payment of the penalty.[49] Restrictions were therefore placed on an ownership of gold which, even if lawful until December 28, 1933, because of the *Campbell* case, had not carried with it the power to transfer or export. The Order withdrew from ownership holdings of gold in amounts under $100.00 and chance holdings that had not already been withdrawn from circulation.

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[49] By Instructions to the Treasurer on January 17, 1934 (Appendix, p. 96), provision was made for payment, dollar for dollar, in lawful money, for all gold coins and certificates thereafter surrendered which had been withheld in violation of prior Orders, and for payment of $20.67 in lawful money for all gold bullion thereafter surrendered which had been similarly withheld.

On January 30, 1934, the Gold Reserve Act of 1934 (Appendix, p. 98) was approved. It conferred upon the Secretary of the Treasury the power to prescribe "by regulations issued hereunder with the approval of the President * * * the conditions under which gold may be acquired and held, transported, melted or treated, imported, exported, or earmarked: (1) for industrial, professional, and artistic use; (2) by the Federal Reserve banks for the purpose of settling international balances; and (3) for such other purposes as in his judgment are not inconsistent with the purposes of this Act." It states further that gold may thus be acquired and held, transported, melted or treated, imported, exported, or earmarked only to the extent permitted by the regulations. Gold coin was withdrawn from circulation by the Act, and the United States was prohibited from paying it out under any circumstances. Gold in any form and in every case was therefore subjected to regulation by legislation of a permanent nature.

On January 30 and 31, 1934, the President approved the Provisional Regulations (Appendix, p. 115) issued by the Secretary of the Treasury thereunder. These continued in substance the regulation of the holding, acquisition, and export of gold bullion. Gold coin cannot, under these regulations, be acquired or melted for any purpose except by the United States.

On January 31, 1934, by proclamation (Appendix, p. 144) the President reduced the weight of

the gold dollar to fifteen and five twenty-firsts grains of standard gold.[50] Gold lawfully acquired and held after the Proclamation by the President, in the instances in which it may be sold to the United States, is paid for at the rate of $35 an ounce, less a small deduction for handling charges; similarly, gold which may be acquired from the United States is sold at that rate plus a small amount for handling charges. Gold coin withheld in violation of the Order of the Secretary of the Treasury of December 28, 1933, is paid for, when presented, dollar for dollar, in lawful money; and gold bullion so withheld and presented is still paid for at the rate of $20.67 an ounce, under the provisions of the Order of the Secretary of the Treasury of January 15, 1934, and the Instructions of January 17, 1934 (*supra*, page 112). Therefore no gold coin, whether with its old weight or its new, may circulate. There is no free market for gold coin in terms of lawful money.

3. The Gold Coin Interpretation

A. *The gold clause should be interpreted to call simply for payment in gold coin*

(1) INTENTION OF THE PARTIES AS EXPRESSED

The bonds contain an obligation to pay one thousand dollars in "gold coin of the present

[50] The Proclamation was, in effect, ratified by the Congress by two Acts approved June 19, 1934, c. 655, Sec. 2, 48 Stat. 1115; c. 653, Sec. 1, 48 Stat. 1195, 1107.

standard of weight and fineness." The mortgage contains the phrase "* * * of or equal to the present standard * * *." The "present standard" means that of May 1, 1903. The plain meaning of the clause is that the parties gave the holders of the bonds the right to require payment in gold coin of a particular content. To construe the clause as giving the holders the right to demand payment in currency, equivalent in value to the asserted value of a specified amount of gold at the date of maturity, or, as respondents ask, at the date of payment, would be to rewrite the contract for the parties.

The clause has real meaning when read according to its terms. By providing for payment in gold coin it indicates an intention to protect against depreciation of one kind of money as compared with another, as for example, paper money compared with gold, or silver compared with gold; and by providing that the gold coin so paid shall be of a particular standard, it attempts to assure against payment in coin of lesser gold content. This interpretation is reinforced by the historic origins of the clause in this country.[51] The Civil War period demonstrated the possibility of disparity between two types of money; and the agitation for unlimited coinage of silver near the close of the last cen-

[51] See *e. g.*, A. Nussbaum, *La Clause-Or Dans les Contrats Internationaux*, in 43 *Recueil des Cours, Académie de Droit International* (1933), 559, 562.

tury suggested a similar possibility. In addition, this Government had more than once, and others frequently, reduced the content of circulating coin. The clause thus has real meaning and effect in a dual monetary system where coin and currency are allowed to circulate and fluctuate in value, one against the other, or where gold coins of different metallic content are circulating, and where by law only coin is payable in discharge of certain kinds of debts. The clause does not reveal an intention to protect against a situation where gold coin no longer circulates and all forms of money are maintained in the United States at a parity with each other.[52] It stands in contrast to clauses, more modern than the one in the instant case, which express alternative obligations, designed in the light of the withdrawal of coin from circulation in recent years in a number of countries.[53]

This interpretation is further borne out by the expressed intention of the parties to make the bonds negotiable. The bonds themselves provide that ". . . registration, however, shall not affect the negotiability of the coupons, which shall continue to be transferable by delivery" (R. 158). Section 1

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[52] For a clause of a very different type, adjusting the amount of the debt to the price of gold if the latter should change sufficiently to affect the "general price of merchandise", see *Ames* v. *Quimby*, 96 U. S. 324.

[53] See, *e. g.*, Goodbar, "*Dollar Bond*" *Indentures of French and German Corporations* (1933), 13 Bost. Univ. L. Rev. 22, 48–49.

(2) of Article I of the Uniform Negotiable Instruments Law requires that an instrument to be negotiable must "contain an unconditional promise or order to pay a sum certain in money", and this requirement of the Law would be violated if the obligation were construed as giving an option to pay or to demand an indeterminate amount of money sufficient at a future date to buy a stated amount of gold.[54]

So far as appears, the parties did not anticipate the existense of conditions making it impossible and illegal to procure gold coin with which to meet the obligations. The courts will not revise the contract in order to effectuate what might have been their intention if such a situation had been envisaged. This Court on several occasions has refused to imply an obligation to pay in gold coin, even though such may have been the expectation of the parties, where the contract did not so provide.

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[54] Section 6 (5) of Article I of the Uniform Negotiable Instruments Law provides that the validity and negotiable character of an instrument are not affected by the fact that it designates a particular kind of current money in which payment is to be made. If the gold clause is construed to mean payment in gold coin, as we maintain, the bonds are not rendered nonnegotiable; and the New York courts have so held. *Chrysler* v. *Renois*, [illegible] N. Y. 209.

It is noteworthy that listing has been denied by the New York Stock Exchange to bonds and notes containing in their gold clauses the phrase "or the equivalent thereof." See Post and Willard, *The Power of Congress to Nullify Gold Clauses*, 46 Harv. L. Rev. 1225, note 1.

Legal Tender Cases, 12 Wall. 457, 548; *Thompson* v. *Riggs,* 5 Wall. 663; *Woodruff* v. *Mississippi,* 162 U. S. 291; *Maryland* v. *Baltimore & Ohio R. R. Co.,* 22 Wall. 105. The Court may be particularly reluctant to imply an unexpressed obligation at the behest of the creditors where, as here, the clause in question is part of a standardized form presented to borrowers by lenders. The latter had an opportunity to express their intention clearly; there are gold clauses which state that coin shall be paid or an equivalent in lawful money; but this language was not used, and that which was used is properly construed strictly against the creditors.

(II) BRONSON *v.* RODES AND SUCCEEDING CASES SUPPORT THIS CONSTRUCTION

The decisions of this Court lend support to the view that clauses of the type involved here should be interpreted as giving the right to demand payment in gold coin and not in some currency equivalent. Such was the decision in *Bronson* v. *Rodes,* 7 Wall. 229, and in the cases which followed it. *Bronson* v. *Rodes,* it will be recalled, involved a contract made in 1851, payable "in gold and silver coin, lawful money of the United States." This Court declared that the contract could be satisfied only by payment in coin. The principle of *Bronson* v. *Rodes* was reaffirmed in *Trebilcock* v. *Wilson,* 12 Wall. 687, a few months after the decision in the *Legal Tender Cases.* The *Bronson* and *Trebilcock* cases were followed in *The Emily Souder,* 17 Wall. 666, in which judgment was entered payable in

gold coin for the amount due on drafts stated to be payable in gold.

In two cases involving gold clauses this Court reversed judgments for currency equivalent to the market value of gold, and ordered judgment to be entered for gold coin. *Butler* v. *Horwitz,* 7 Wall. 258; *Dewing* v. *Sears,* 11 Wall. 379. These two cases are especially significant for two reasons. First, they involved obligations payable, respectively, in foreign coin and according to the weight of gold, obligations which might have been construed as contracts for the delivery of a commodity, for the breach of which damages could be awarded in lawful money. Second, the creditors were willing to accept currency in satisfaction. The fact that the Court required payment to be made in coin in such cases indicates a rejection of the view that currency, whatever the amount, might satisfy the contract.

These decisions are not altered by certain other cases in which judgments for the value of gold were approved. In none of these was the action based on a gold-clause obligation. In *The Vaughan and Telegraph,* 14 Wall. 258, and *United States* v. *Erie Railway Co.,* 107 U. S. 1, no gold clause was involved. In *Gregory* v. *Morris,* 96 U. S. 619, the action was not based upon a contract containing a gold clause; in the words of the Court: "the suit is not upon the contract for the recovery of the amount agreed to be paid, but in effect, for dam-

ages on account of the wrongful detention of property mortgaged to secure the debt" (96 U. S. at 624). The case was an action of replevin under the laws of Wyoming Territory, and presented the question of the mode of calculating "damages" in replevin under the Wyoming law. Or, as stated by the Court:

> The question is not whether Gregory had the right to pay in gold dollars after his debt had become due, but whether, having wrongfully got the property into his possession without payment at all, the damages he is required to pay on account of this wrongful act must, as a matter of law, be estimated in gold, or whether they may be in currency (96 U. S. 625).

The case left unquestioned the decisions in *Dewing* v. *Sears* and *Butler* v. *Horwitz, supra,* both actions on contracts, in which judgments for the currency equivalents were reversed and judgments for coin were ordered.

(III) ENGLISH AND PERMANENT COURT CASES DISTINGUISHED

The recent decision of the House of Lords in *Feist* v. *Société Intercommunale Belge d'Electricité* [1934], A. C. 161, is not inconsistent with the view that the gold clause in the present contract must be interpreted as requiring payment in gold coin. The *Feist* case involved the meaning and effect of bonds issued by a Belgian company in 1928 and sold in London, expressed to be payable in the

sum of one hundred pounds "in sterling in gold coin of the United Kingdom of or equal to the standard of weight and fineness existing on September 1, 1928." The House of Lords, reversing the judgment of the Court of Appeal, rested its decision upon a construction of the bonds which none of the judges below had taken,[55] that the bondholders were entitled to currency equivalent to the market value of the specified amount of gold coin.

The conclusion of the House of Lords reaches a different result from that arrived at by this Court in the decisions involving gold clauses, although in each case the clause was enforced. Lord Russell, approaching the question of the meaning of the clause from the standpoint of the time and circumstances of the making of the contract, emphasized two facts concerning the English monetary system of that time which clearly differentiate the background of the *Feist* case from that which prevailed in the United States from the time of the *Bronson* case until very recently. *First,* when the Belgian

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[55] In the Chancery Division, Mr. Justice Farwell held that the gold clause was inconsistent with the controlling provisions of the documents, and that the contract was one to pay £100 and interest at 5½%. He therefore made a declaration authorizing payment in the face amount of the bonds in any form of legal tender. This judgment was affirmed by the Court of Appeal. Lord Justice Lawrence and Lord Justice Romer, in the Court of Appeal, laid emphasis upon the Coinage Act of 1870, which in their opinion made it illegal to stipulate for payment in a particular form of legal tender. The House of Lords, in reversing the judgment below, did not discuss the effect of the Coinage Act of 1870.

bonds were issued in 1928 Great Britain, although having resumed the gold standard three years before, was no longer redeeming currency in gold, and gold coin was substantially no longer in circulation. From this situation Lord Russell inferred that the gold clause was inserted "in contemplation of the contingency of this country going (as it did in 1931) off the gold standard at some future date" and that "neither party to the bond can have contemplated payment under the bond being actually made in gold coins." *Second,* under English law, the Bank of England notes were full legal tender for all purposes at the time the bonds were issued. In both of these respects it will be noted that the situation in England was different from that which until very recently prevailed in the United States. It is evident, therefore, that to approach the question of the meaning of the clause, as the House of Lords did, from the standpoint of the circumstances prevailing at the time the contract was made, will yield a very different result in the case at bar from that reached in the *Feist* case.

The decisions of the Permanent Court of International Justice at The Hague, in the cases of Serbian and Brazilian bonds (P. C. I. J., Series A, Nos. 20–21), are perfectly consonant with the view that the present bonds conferred a right to demand payment in gold coin, and not in an asserted equivalent. The Serbian and Brazilian bonds contained so-called multiple-currency clauses; they were payable in various coun-

tries where the franc was the standard unit, but the franc of no particular country was specified. The bonds called for payment in "gold francs" ("*francs d'or*"), which had no existence as circulating media in any of the countries. That the parties contracted in terms of a measure of value, not a mode of payment, was apparent both from the language employed and from the acknowledged purpose to guard against fluctuations of one national currency in terms of another.

B. Payment in gold coin has been and is impossible and illegal and should be excused

Since it has been impossible to obtain gold coin or gold in the United States to discharge a domestic gold-clause obligation (see pages 101 to 114, *supra*), the present debtor would be excused, in an action on the bonds, from the obligation to pay in gold coin.[56]

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[56] Prior to January 30, 1934, it was legally possible to import gold into this country to discharge a domestic gold clause obligation. But it cannot be contended seriously that each gold clause debtor could have obtained the necessary amount of United States gold outside of the United States. The debtor would be required to seek this coin in competition with other debtors similarly situated, and there was certainly not enough United States gold coin abroad to meet these requirements. Furthermore, even if it be assumed that gold coin were available abroad, the debtor need not seek to obtain it outside the country. This situation was presented in *American Chicle Co.* v. *Somerville Paper Co.*, 50 Ont. L. R. 517, in connection with a mortgage on Cana-

If the respondents could not, outside the bankruptcy proceedings, successfully demand payment in gold coin, their claim in these proceedings cannot be greater.

(1) IMPOSSIBILITY IN FACT

Since a free gold market has, until March 1933, always existed in the United States, even during the period just after the Civil War, when the United States was off the gold standard, legal impossibility has only recently become available as a defense to an obligation to pay in gold coin. The gold clause, properly construed, indicates that the parties contemplated the continuing existence of gold coin as a medium of currency, or at least a free gold market in the United States. Where the terms and circumstances of a contract indicate that the parties rely upon the continuance of conditions, such as a source of supply, which, through unforeseen contingencies, have ceased to exist at the time when performance is due, the obligation to perform will be excused. *The Tornado*, 108 U. S. 342; *Western Hardware and Manufacturing Co.* v. *Bancroft Charnley Steel Co.*, 116 Fed. 176 (C. C. A. 7th); *Browne* v. *U. S.*, 30 Ct. Cl. 124; *International Paper Co.* v. *Rockefeller*, 161 App. Div. 180.

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dian lands which provided for "payment in current gold coin at the option of the mortgagees of $75,000, of lawful money of Canada." The Court rejected the argument that the debtor should have procured coin in the United States, although such coin could have been imported into Canada and was there legal tender at its face value.

The defense of impossibility in fact has another aspect. Since the Government has not only made it impossible to obtain gold but has also required persons to surrender gold to itself, cases of requisition by the Government under its war powers present a close analogy. Where the Government requisitions a supply which was relied upon by the parties to a prior contract, performance of the contract is excused. *Omnia Commercial Co.* v. *U. S.*, 261 U. S. 502; *Moore & Tierney Inc.* v. *Roxford Knitting Co.*, 250 Fed. 278 (N. D. N. Y.). See also *Metropolitan Water Board* v. *Dick Kerr & Co.*, 1918 A. C. 119; *Shipton, Anderson & Co.* v. *Harrison*, 3 K. B. 676 (1915).

(II) IMPOSSIBILITY IN LAW

Not only is payment in gold coin impossible in fact, but an attempt to secure the medium for such payment would involve an illegal act. Such supervening illegality is an independent ground for excusing performance. *Manigault* v. *Springs*, 199 U. S. 473; *Louisville & Nashville R. R.* v. *Mottley*, 219 U. S. 467; *Omnia Commercial Co.* v. *U. S.*, 261 U. S. 502, 511; *Board of Commissioners* v. *Young*, 59 Fed. 96 (C. C. A. 6th); *Northern Pac. Ry. Co.* v. *St. P. & Tacoma Lumber Co.*, 4 Fed. (2d) 359 (C. C. A. 9th); *Operators' Oil Co.* v. *Barbre*, 65 F. (2d) 857 (C. C. A. 10th); *Restatement of the Law of Contracts*, Sec. 458 of Ch. 14; Williston on *Contracts*, Sec. 1938.

The respondents argued below that the defense of impossibility in law as of May 1, 1933, is not available, for the reason that the principle of the decision in *Campbell* v. *Chase National Bank*, 5 Fed. Supp. 156, is applicable to render the Executive Orders of April 5 and April 20 invalid. It will be recalled that this case held that the Executive Order of August 28, 1933, insofar as it requisitioned gold coin, was not within the mandate of the Emergency Banking Act, as the authority to issue such an Order was conferred by that Act upon the Secretary of the Treasury and not upon the President. See page 111, *supra*. The correctness of that decision is not conceded.[57] But if its soundness be assumed, it does not impeach the defense of legal impossibility in the case at bar. The defense of impossibility, in law as of May 1, 1933, raises the question not of the validity of the then existing Orders, but of the right of the obligor to rely upon their assumed validity at that time in the absence of an attack upon them by the bondholders. It can

[57] The decision rests upon an assumed dichotomy between requisition of coin and other measures which the court without defining them intimates would be more properly related to the prevention of hoarding. It should be noted that the Orders of April 5 and August 28 exempted from requisition gold required for legitimate and customary use in industry, profession, or art, for legitimate export purposes, and for other proper transactions (see pages 103, 108, supra). It may be true that not all gold otherwise held by individuals was necessarily held for hoarding purposes; but the difficulty of discriminating between possession for

hardly be suggested that it was incumbent upon the debtor to violate the Orders existing on May 1, 1933, and so to run the risk of criminal prosecution as a condition precedent to asserting the defense of impossibility in law. Compare *The Kronprinzessin Cecilie*, 244 U. S. 12 (1917), in which performance of a contract of carriage was excused where it involved a serious risk, though not certainty, of injury. Compare also *Hulton & Co.* v. *Chadwick & Taylor*, 34 T. L. R. 230, where performance, although it would not have been illegal, was excused because it would probably have resulted in a revocation of the defendant's license to import. Moreover, any possible defect in the mode of issuing the Orders existing on May 1, 1933, has been removed by the Gold Reserve Act of 1934. Section 13 thereof approves, ratifies, and confirms all actions, regulations, rules, orders, and proclamations heretofore taken, promulgated, made, or issued by the President or the Secretary of the Treasury under the Emergency Banking Act. This ratification is equivalent to antecedent authorization; and is controlling at this stage of the proceedings. Compare *Charlotte Harbor Ry. Co.* v. *Welles*, 260 U. S. 8; *Rafferty* v. *Smith, Bell & Co.*, 257 U. S. 226; *United States* v. *Heinszen*, 206 U. S. 370.

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one purpose and for another would seem to warrant the broader regulation in order to assure the success of the prevention of hoarding. Compare *Powell* v. *Pennsylvania*, 127 U. S. 678; *Westfall* v. *U. S.*, 274 U. S. 256, 259; *Purity Extract Co.* v. *Lynch*, 226 U. S. 192.

C. The gold clause obligation may be satisfied by payment of its stated dollar amount, in consequence of impossibility in fact and in law

In the case at bar, only one term of the promise in the gold clause is impossible to perform and illegal. The remainder of the obligation should therefore remain as it stands. In short, the obligation becomes one to pay the stated number of dollars. Compare *Greene* v. *Uniacke*, 46 F. (2d) 916 (C. C. A. 5th). Since the obligation becomes one merely to pay dollars, fluctuations in the value of dollars will be ignored. See *Deutsche Bank Filiale Nurnberg* v. *Humphrey*, 272 U. S. 517, 519.[58]

A parallel to the present case arose in Canada during the World War. The court there held that a contract to pay "in current gold coin at the option of the mortgagees of $75,000 of lawful money of Canada" was dischargeable by payment of the face amount of the debt in lawful money where legislation and orders in council made it legally impossible at maturity to procure gold coin

[58] Compare also cases where dollars are paid in the United States to secure delivery of foreign currency abroad. Where the plaintiff elects to sue in quasi-contract rather than for damages, recovery is allowed only for dollars expended, since fluctuations of the currency of the forum are disregarded. *American Union Bank* v. *Swiss Bank Co.*, 40 F. (2d) 446, *Buckman* v. *American Express Co.*, 262 Mass. 299; *Safian* v. *Irving National Bank*, 202 App. Div. 459, aff'd., 236 N. Y. 513. Compare also Nebolsine, *The Gold Clause in Private Contracts*, 43 Yale Law Journal 1051, 1079.

in Canada or to export it to the United States. *American Chicle Co.* v. *Somerville Paper Co.*, 50 Ont. L. R. 517. The court said (pp. 524–5):

> * * * although it may become during a shorter or longer period of time, depending upon the exigencies of the State, impossible for a debtor to comply with a contract to pay his debt in the way in which his creditor desires, then, provided he can do so in another way permitted by the law of his country, his property cannot be held in pledge or forfeited because of that impossibility. And, if the difficulty be caused by an act of State required for the national security, the debtor is relieved, while the law operates, from the abnormal demand, and if sued is enabled to discharge his debt in the currency then made legal tender by his country's laws.[59]

Two recent decisions in this country have reached a similar result. *Irving Trust Co.* v. *Hazlewood*, 148 Misc. 456; *Kennedy* v. *Conrad* (Colo.), unreported, quoted in 78 Cong. Rec. 5953, 5955.

Even if the obligation is regarded as wholly terminated because of the impossibility and illegality

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[59] The decision in the *Feist* case in no way affects the authority of this case on the question of the legal effect of impossibility to procure gold coin within the country, where the obligation is interpreted as a promise to pay in gold coin. The *Feist* case reached a different conclusion on the question of interpretation of the gold clause in bonds which were executed under different circumstances, those circumstances being deemed controlling as to the meaning of the clause.

of performance, the amount of the claim will be determined on quasi-contractual principles. The basis of the quasi-contractual claim is that the claimant is entitled to restitution for what he has given to the debtor. See *N. Y. Life Ins. Co.* v. *Statham,* 93 U. S. 24; *Pullman's Palace Car Co.* v. *Central Transp. Co.,* 171 U. S. 138; *New York Central & Hudson River R. R. Co.* v. *Gray,* 239 U. S. 583; Cf. *Louisville & Nashville R. R. Co.* v. *Mottley,* 219 U. S. 467, 486; Woodward on *Quasi Contracts,* Sec. 127. So far as appears, the purchase price of the bonds was in the form of legal tender money, not gold. The court cannot indulge in remote speculation as to the nature of this payment, in the absence of factual foundation of record negativing the presumption that it was in no special form of legal tender money.

But even if gold was given for the bonds, the amount of recovery can be no greater than had currency been given. For recovery is measured by the value of what was given, as of the time it was given. And at that time gold was merely equivalent in value to other lawful money. Moreover, as we shall now show, even if subsequent benefit to the debtor could be considered, there is no evidence that gold ever became of greater value to the debtor than the equivalent face amount of currency.

D. Even if respondents were paid at any time in gold coin its value to them would be only the face amount thereof

On an interpretation of the gold clause to mean payment in gold coin, the respondents are not entitled to claim more than the face amount of the bonds. The unsoundness of a greater claim is best demonstrated by assuming payment in gold coin by the debtor and determining what benefits would accrue to the bondholders from such performance.

The bonds became due on May 1, 1933. It has been shown, *supra,* pages 102 to 106, that on that date the ownership, export, and free circulation of gold in any form was prohibited except in limited irrelevant instances. Therefore, if payment had been made in gold coin on May 1, 1933, the respondents would have been required to surrender it and could under no circumstances have received therefor more than an equal amount of lawful money, i. e., a dollar-for-dollar exchange. Even if it were assumed that because of the decision of Judge Woolsey in *Campbell* v. *Chase National Bank, supra,* page 110, the holding of gold was legal on May 1 and payments in gold coin could have been made without incurring penalty, the consequences, insofar as they are pertinent here, are the same. The validity of the Executive Order of April 20 prohibiting the export of gold coin, gold bullion, and gold certificates has not been questioned. Compare *Ling Su Fan* v. *U. S.,* 218 U. S. 302. If,

therefore, payment in gold coin could legally have been made on May 1, the respondents would have been confined in their use of it to this country. In this country the value of gold bullion did not vary from the statutory price except that on August 29, 1933 the price of newly mined gold and gold to licensees for industrial purposes was increased. The price of newly mined or industrial gold had no bearing on gold coin in the hands of the respondents, who could not circulate it as coin (or as bullion melted down from the coin). Upon surrender they could receive only a dollar-for-dollar exchange. This phase of the Order was not challenged in the *Campbell* case. Indeed, Judge Woolsey vigorously upheld the fundamental aspects of the Order. One holding ordinary gold bullion or gold coin could, therefore, realize on it only at the Federal Reserve banks, and there only at the statutory rate. Therefore, on December 28, 1933, pursuant to the Order of the Secretary of the Treasury, the respondents would have been required to accept for their gold coin legal tender in the face amount of the bonds. See *Kennedy* v. *Conrad,* unreported, quoted in 78 Cong. Rec. 5953, 5955.

When on January 31, 1934, the weight of the gold dollar was reduced by the Presidential Proclamation, no person within the United States was entitled to hold gold coin, gold bullion, or gold certificates except for certain restricted purposes. If payment on the bonds had been made prior to

the Proclamation, the respondents would on the date of the Proclamation be holding, not gold, but other money in an amount equal to the face amount of the bonds. If payment were made after the Proclamation, such a transfer would involve an acquisition of gold by the respondents in violation of the Gold Reserve Act and the regulations pursuant thereto. It is, therefore, unnecessary to determine whether after January 31, 1934, licensed holders of gold might command a price according to the new statutory price of gold or whether one surrendering gold without being subject to the penalty provisions of the Order of the Secretary of the Treasury of December 28, 1933, could receive therefor the full statutory price. It is sufficient that after January 31, 1934, *the respondents* could not be in possession of gold coin received prior thereto and could not avail themselves in any respect of the new statutory price if gold coin were offered to them and accepted.

The respondents are, therefore, seeking to claim on a money obligation a principal amount in excess of what they would receive if the debtor performed his obligation. They are seeking a windfall—not indemnity for loss. On the other hand, a claim by the respondents for an amount of money equal to the stated dollar amount of the bonds would be a claim for the most they could have realized if payment had actually been made in gold coin on May 1, 1933, or after January 31, 1934. Compare

Wicker v. *Hoppock,* 6 Wall. 94; *U. S.* v. *Behan,* 110 U. S. 338.

4. The currency equivalent interpretation

A. *The currency equivalent is the stated dollar amount of the obligation*

In the event that the Court should reject the interpretation advanced above, that the gold clause is a single obligation for payment in gold coin, and is of the opinion that the clause calls, in the alternative, for an "equivalent" in other money, it is necessary to select a standard for determining such equivalence. The respondents, in their petition for intervention (filed December 27, 1933), claimed as an alternative to payment in gold coin, payment in lawful money at the "market value" of the gold contained in such gold coin (R. 58, 59); but since the statutory price of gold has been changed by the Proclamation of January 31, 1934, from $20.67 to $35 an ounce, the respondents appear to believe that "equivalent" means the statutory equivalent (R. 135, 136; 252, 253).

If the gold clause is to be construed as a measure of payment, it would seem apparent that the equivalent is not an amount in excess of the value of the gold coin paid to creditors as expressly stipulated in the clause. "Equivalent" denotes an amount of money which would be worth to the creditor the same as the stipulated coin; that is, an amount which would leave him as well off as he would have

been had he received the coin. This view is borne out by the origins of the clause and by the decisions. Where there is a continuous free gold market and a dual monetary system is permitted, the equivalent is deemed to be the amount of legal tender currency which would purchase the stipulated gold coin in that market. See *The Vaughan and Telegraph,* 14 Wall. 258; *Gregory* v. *Morris,* 96 U. S. 619. Where there is not a free gold market, and by reason of the restrictions upon the holding of and dealing in gold coin such coin has a value to creditors no greater than other money of equal face amount, there is equivalent payment when there is payment of any money legal tender for the same amount as the gold coin.

It would be a strange interpretation of "equivalence" which would assure to creditors an amount in excess of that which they could have realized if coin were paid at the time, in the amount, and of the standard of weight and fineness of the letter of the contract. The respondents would read into the gold clause and into the word "equivalent", which they imply, an immunity from the Congressional power to regulate the holding and dealing in gold as well as from the power to regulate, and to render effective the regulation of, the value of the dollar.

Even if the debtor, on the due date of the bond, had paid its debt in gold coin and had thereby specifically performed its contract, it is evident that

there has not been a moment since that date, at which the respondents could have derived any greater benefit from the gold coin thus paid than from an equivalent amount, dollar for dollar, of any other kind of money in circulation. What could they have paid with it—no more debts, no more taxes. What could they have secured—no more food, no more raiment, no more property, real or personal.

The respondents are not seeking "equivalence." They are seeking an opportunity to enrich themselves upon a theory which allocates to them greater returns from a breach of the expressed obligation than from its performance.

B. Even if currency equivalence is defined in terms of statutory price of gold the obligation may be satisfied at its dollar face amount in legal tender, since conversion is appropriate as of May 1, 1933

We have attempted to show that the limited statutory price for gold prevailing since January 31, 1934, is not a proper measure of equivalence in the event that the gold clause is deemed to confer a right to demand currency equivalent in value to the gold coin stipulated. But even if the limited statutory price is a proper measure of equivalence, it is irrelevant in the case at bar. If equivalence in currency is to be computed, the computation should be made as of the maturity date of the bonds, namely, May 1, 1933. At that time, as we have shown, gold coin or bullion had no greater value in

this country than paper currency; the value in the foreign markets could not have been availed of; and the statutory price of gold had to no extent been changed.

This Court has not hitherto been required to determine the date as of which recovery on a gold-clause obligation should be computed if judgment is to be rendered in currency measured by the value of gold. In analogous situations, however, the date of maturity has been adopted as the appropriate one for making the conversion. Such has been the rule declared by this Court in cases involving breach of contract to deliver commodities; and in cases involving obligations to pay foreign money in this country. *Hicks* v. *Guinness*, 269 U. S. 71.[60] A similar rule prevails generally in cases of contracts payable in a specified currency. In *Effinger* v. *Kenney*, 115 U. S. 566, 575, this Court said:

> Where a contract is for the delivery of specific articles, the rule undoubtedly is that the damages recoverable for its breach are to be determined by the value of the articles at the time and place of their delivery. Where a contract is payable in a specified currency, the rule is also clear that such cur-

[60] Compare *Deutsche Bank Filiale Nurnberg* v. *Humphrey*, 272 U. S. 517, where the obligation was to pay foreign money abroad. In such a case no right or duty exists under our law at the due date, and our courts will convert into dollars at the date of judgment. See *Zimmermann* v. *Sutherland*, 274 U. S. 253, 255–6; and the discussion in 40 Harvard Law Review 619.

> rency is demandable and receivable at the maturity of the contract, whatever change in its value by increase or depreciation may have taken place in the meantime. The damages recoverable for a breach of the contract are to be measured by the value of the currency at its maturity. * * *

The date of maturity was likewise adopted by the House of Lords in the *Feist* case.

III

Power over coinage and currency is an attribute of sovereignty

If we rested this case here, it might well be said that we had done so on principles too narrow and restricted, no matter how compelling and conclusive they may be. Broader ground, comprehending all that has been said and more, should also be taken. If this nation is to be regarded as more than a congeries of people, if it is to continue as a welded whole, its authority to coin money and regulate the values thereof, to legislate concerning the currency and to prescribe what shall be legal tender for all purposes cannot be restrained by the provisions of private contracts nor subordinated to the tenor of individual obligations.

That the United States is a sovereign nation and possesses the essential powers of sovereignty has been upheld by this Court in early and late decisions. In *Cohens* v. *Virginia,* 6 Wheat. 264, 380, Chief Justice Marshall declared:

> The American states, as well as the American people, have believed a close and firm union to be essential to their liberty and to their happiness. They have been taught by experience that this union cannot exist, without a government for the whole; and they have been taught by the same experience, that this government would be a mere shadow, that must disappoint all their hopes, unless invested with large portions of that sovereignty which belongs to independent states. * * *

In his concurring opinion in *The Legal Tender Cases*, Mr. Justice Bradley said, p. 554:

> The Constitution of the United States established a government, and not a league, compact, or partnership. It was constituted by the people. It is called a government. In the eighth section of Article I it is declared that Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in *the government of the United States*, or in any department or office thereof. As a government it was invested with all the attributes of sovereignty. * * *

In another Legal Tender Case, *Juilliard* v. *Greenman*, 110 U. S. at p. 438, Mr. Justice Gray asserted that, "The people of the United States by the Constitution established a national government *with sovereign powers, legislative,* executive, and judi-

cial" (italics ours). Again, in *Mackenzie* v. *Hare,* 239 U. S. 299, 311, Mr. Justice McKenna said that "there may be powers implied, necessary, or incidental to the expressed powers. As a government, the United States is invested with all the attributes of sovereignty." And recently, in *Burnet* v. *Brooks,* 288 U. S. 378, 396, Chief Justice Hughes declared:

> As a nation with all the attributes of sovereignty, the United States is vested with all the powers of government necessary to maintain an effective control of international relations. * * * "We should hesitate long", we said in *Mackenzie* v. *Hare,* 239 U. S. 299, 311, "before limiting or embarrassing such powers."

Similar assertions of the existence of sovereign power are to be found in *Tiaco* v. *Forbes,* 228 U. S. 549, 556–557, in which Mr. Justice Holmes said: "It is admitted that sovereign states have inherent power to deport aliens, and seemingly that Congress is not deprived of this power by the Constitution of the United States"; and in *Georgia* v. *Chattanooga,* 264 U. S. 472, 480, in which Mr. Justice Butler pronounced (p. 480): "The power of eminent domain is an attribute of sovereignty, and inheres in every independent State", citing *United States* v. *Jones,* 109 U. S. 513, *Boom Co.* v. *Patterson,* 98 U. S. 403, and other cases to the same effect.

The greatest of these sovereign powers, no doubt, is that of self-preservation, or national defense, but

next to it and closely associated with it, in war and in peace, is the power to coin or create money, control the currency, and to regulate its value. Said Mr. Justice Bradley in the *Legal Tender Cases* (pp. 563, 567):

> It is absolutely essential to independent national existence that government should have a firm hold on the two great sovereign instrumentalities of the *sword* and the *purse* and the right to wield them without restriction on occasions of national peril. * * * * * * * * *
>
> I do not say that it is a war power, or that it is only to be called into exercise in time of war, for other public exigencies may arise in the history of a nation which may make it expedient and imperative to exercise it. But of the occasions, when and of the times how long, it shall be exercised and enforced, it is for the legislative department of the government to judge. Feeling sensibly the judgments and wishes of the people, that department cannot long (if it is proper to suppose that within its sphere it ever can) misunderstand the business interest and just rights of the community.

Even if the framers of the Constitution had omitted the words "The Congress shall have power * * * to declare war", it can scarcely be doubted that such power would be upheld as an attribute of sovereignty, and that under it the manhood and the means of the country could be forced into service. The truth of this is emphasized

by what we know of modern warfare, which fights its battles not alone with armies in the field, but impresses whole peoples and commands their resources to the utmost. Interwoven with this great power and almost as essential is complete control of coinage and currency, as to which it is equally true that the problems of peace are no less difficult than those of war. In his writings (Ed. 1854, Vol. 7, p. 463), Mr. Jefferson said: "Coinage is peculiarly an attribute of sovereignty"; and this Court, in *Ling Su Fan* v. *United States,* 218 U. S. 302, 310, asserted that "The power to 'coin Money and regulate the value thereof, and of foreign coin', is a prerogative of sovereignty and a power exclusively vested in the Congress of the United States."

Story, in his Constitution of the United States (5th Ed., Vol. 2, p. 59), pointed out:

> In England, this prerogative belongs to the Crown, and in former ages it was greatly abused. * * * The only question which could properly arise under our political institutions is, whether it should be confided to the National or to the State government. It is manifest that the former could alone give it complete effect, and secure a wholesome and uniform currency throughout the Union.

Concerning the control of the currency, as a prerogative of sovereignty, it was said in the famous

Mixed Money Case, decided in the year 1604 (Sir John Davies' Report, pp. 48, 51, 55), that:

> It appertaineth only to the king of *England,* to make or coin money within his dominions; so that no other person can do it without special license or commandment of the king; and if any person presume to do it of his own head, it is treason against the person of the king by the common law; * * *. * * * that as the king by his prerogative may make money of what matter and form he pleaseth, and establish the standard of it, so he may change his money in substance and impression, and enhance or debase the value of it, or entirely decry and annul it, so that it shall be but bullion at his pleasure. * * *

and showing the close analogy of that ancient case to the one at bar (pp. 72–73):

> it was resolved, that although at the time of contract and obligation made in the present case, pure money of gold and silver was current within this kingdom, where the place of payment was assigned; yet the mixed money being established in this kingdom before the day of payment, may well be tendered in discharge of the said obligation, and the obligee is bound to accept it; * * *[61]

[61] Blackstone (ch. 6, p. 88; Lewis 1900 Vol. 4, 1492) tells us that by amendments to the statute 25 Edw. III, "the crime itself (counterfeiting or importing and circulating counterfeit money) is made a species of high treason; as being a breach of allegiance, by infringing the King's prerogative, and assuming one of the attributes of the

Historical accounts of the confusion which existed among the several original States, resulting in the transfer of this prerogative from them to the United States, will be found in Story's Constitution of the United States (5th Ed., Vol. 2, pp. 58,

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sovereign, to whom alone it belongs to set the value and denomination of coin made at home or to fix the currency of foreign money * * * and, upon the same reasons, by a law of the Emperor Constantine false coiners were declared guilty of high treason, and were condemned to be burned alive: as by the laws of Athens all counterfeiters, debasers, and diminishers of the current coin were subjected to capital punishment."

There is also contained under crimen falsi the crime of high treason, which is multiple: as if anyone should falsify the seal of our Lord the King, or make false money, and that sort of thing. (*Bracton, DeLegibus et Consuetudinibus Angliae* II, 3, fo. 118 b.)

Those who are guilty of counterfeiting have committed high treason. (*The Code of Justinian*, IX, 24, 2.)

When coinage was established as a state monopoly, the exercise of the function became an attribute of sovereignty.

In Persia, Macedon, and Rome, to coin gold, except in special circumstances, was to claim imperial power. (*Money and Monetary Policy in Early Times*, A. R. Burns (1927), pp. 83, 109.)

The right to coin money has always been and still remains the surest mark and announcement of sovereignty. (*History of Monetary Systems* (Alexander Del Mar), p. 107.)

The right of minting coins was, from the earliest days, so closely connected in the public mind with the power of the state, that it was always regarded as an essential attribute of sovereignty, and the history of the exercise of this power reflects the general lines of development of state authority itself. (*Money* (Karl Helfferich, 1927), p. 29.)

Similarly see *Moneys of Antiquity*, II (Lenormant), p. 427.

59); A History of the People of the United States (McMaster, Vol. 1, pp. 189–193); A History of Currency in the United States (A. Barton Hepburn, pp. 33, 34); Formation of the Union (Albert Bushnell Hart, pp. 121, 122); Financial History of the United States (Davis Rich Dewey, pp. 101, 102); The Critical Period of American History, 1783–1789 (John Fiske, p. 165). See also *Shollenberger* v. *Brinton,* 52 Pa. State, 9, 67, 69.

Section 10, Article I, of the Constitution provides that "No State shall * * * coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts", thus clearly recognizing that these powers which had been possessed by the States were sovereign and that their retention would be not only inconsistent with but in derogation of the sovereignty attaching to the National Government by virtue of its creation or vested in it by the Constitution. In emptying the States of this great power, manifestly it was not intended to annihilate it, since the necessity for its continued exercise was, or probably would be, greater than ever before. On the contrary, the words of limitation thus applied to the States made certain of the centralization of this high prerogative in the Government of the United States. Thayer (Legal Essays 1908, p. 75) expressed the idea in these words:

> The Constitution, in giving to Congress the power to coin money is not, just then,

> concerned with the technicalities of law or political economy; it is disposing of one of the "*jura majestatis*" [62] in brief and general terms in phrases which are the language of statesmen.

In *Julliard* v. *Greenman, supra,* pp. 439, 446, this Court indicated the scope of this sweeping power in these words:

> The breadth and comprehensiveness of the words of the Constitution are nowhere more strikingly exhibited than in regard to the powers over the subjects of revenue, finance, and currency, of which there is no other express grant than may be found in these few brief clauses. * * *
>
> By the Constitution of the United States, the several States are prohibited from coin-

---

[62] The legitimation of money and the giving it its denominated value is justly reckoned *inter jura majestatis*, and in England it is one special part of the king's prerogative (Pleas of the Crown (Hale, I), p. 188).

In the George Washington Law Review (March 1934), p. 321, Professor Charles S. Collier, in an able and comprehensive review of the subject, "Gold Contracts and Legislative Power", observes: "The fundamental intention of the framers of our present Constitution was to transfer this whole subject of the currency to the control of Congress and to make that control doubly sure by restricting the states specifically and omitting any specific relevant restrictions as regards the newly established federal powers in this field.

Since the general intention was to confer upon Congress control over the currency, and no specific restriction was mentioned as applicable to Congress, it may well be urged that the Nation should be regarded as succeeding to the powers which may be deemed *appropriate to sovereignty* in relation to the whole question of currency control."

ing money, emitting bills of credit, or making anything but gold and silver coin a tender in payment of debts. But no intention can be inferred from this to deny to Congress either of these powers. Most of the powers granted to Congress are described in the 8th section of the first article; the limitations intended to be set to its powers, so as to exclude certain things which might otherwise be taken to be included in the general grant, are defined in the 9th section; the 10th section is addressed to the States only. * * *

It appears to us to follow, as a logical and necessary consequence, that Congress has the power to issue the obligations of the United States in such form, and to impress upon them such qualities as currency for the purchase of merchandise and the payment of debts, as accord with the usage of sovereign governments. The power, as incident to the power of borrowing money and issuing bills or notes of the government for money borrowed, of impressing upon those bills or notes the quality of being a legal tender for the payment of private debts, was a power universally understood to belong to sovereignty, in Europe and America, at the time of the framing and adoption of the Constitution of the United States. * * * The power of issuing bills of credit and making them, at the discretion of the legislature, a tender in payment of private debts, had long been exercised in this country by the several Colonies and States; and during the

> Revolutionary War the States, upon the recommendation of the Congress of the Confederation had made the bills issued by Congress a legal tender. * * * The exercise of this power not being prohibited to Congress by the Constitution, it is included in the power expressly granted to borrow money on the credit of the United States.

But if doubt remains that complete power over coinage and currency, in the sense here maintained, is an attribute of sovereignty, as much so in this republic as in France or Great Britain, and as necessary on occasion to it as to them, if respondents insist that the spirit of the Constitution was violated by the Joint Resolution, or if there be any left who claim that the clause which conferred upon the Congress "power to coin money, regulate the value thereof, and of foreign coin", contains an implication that nothing but that which is the subject of coinage, nothing but the precious metals can ever be declared by law to be money or to have the uses of money, the answer is made in the words of this Court that:

> If by this is meant that because certain powers over the currency are expressly given to Congress, all other powers relating to the same subject are impliedly forbidden, we need only remark that such is not the manner in which the Constitution has always been construed. On the contrary it has been ruled that power over a particular subject may be exercised as auxiliary to an express power,

> though there is another express power relating to the same subject, less comprehensive. * * * Whatever power there is over the currency is vested in Congress. If the power to declare what is money is not in Congress, it is annihilated. * * * [*Legal Tender Cases, supra,* pp. 544, 545.]

In *Martin* v. *Hunter,* 1 Wheat. 326, it was said:

> The constitution unavoidably deals in general language. It did not suit the purposes of the people, in framing this great charter of our liberties, to provide for minute specifications of its powers, or to declare the means by which those powers should be carried into execution. * * *

and by Chief Justice Marshall in *McCulloch* v. *Maryland,* 4 Wheat. 316, 407:

> A constitution, to contain an accurate detail of all the subdivisions of which its great powers will admit, and of all the means by which they may be carried into execution, would partake of the prolixity of a legal code, and could scarcely be embraced by the human mind. It would, probably, never be understood by the public. Its nature, therefore, requires, that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects, be deduced from the nature of the objects themselves. * * *

If, as was said by Mr. Justice Story in *Martin* v. *Hunter, supra,* "The instrument was not intended to provide merely for the exigencies of a few years,

but was to endure through a long lapse of ages, the events of which were locked up in the inscrutable purposes of Providence", it is certain that its framers claimed no such omniscience or prevision as enabled them to foresee the complex problems of the Twentieth Century and to prescribe the formulae for their solution. But broad outlines and great principles they did lay down, from which this Court has recognized and developed the doctrine of sovereign powers or, as it is sometimes phrased, of auxiliary or resulting powers, until the authority "to Establish Post Offices and post Roads" has literally come to mean that a swift carrier may take the wings of the morning and fly from coast to coast so that a fast ship may deliver the mail a few days earlier to our Pacific possessions or to the uttermost parts of the earth.

> No single power is the ultimate end for which the Constitution was adopted. It may, in a very proper sense, be treated as a means for the accomplishment of a subordinate object, but that object is itself a means designed for an ulterior purpose. Thus the power to levy and collect taxes, to coin money and regulate its value, to raise and support armies, or to provide for and maintain a navy, are instruments for the paramount object, which was to establish a government, sovereign within its sphere, with capability of self-preservation, thereby forming a union more perfect than that which existed under the old Confederacy.

The same may be asserted also of all the nonenumerated powers included in the authority expressly given "to make all laws which shall be necessary and proper for carrying into execution the specified powers vested in Congress, and all other powers vested by the Constitution in the government of the United States, or in any department or officer thereof." It is impossible to know what thoese nonenumerated powers are, and what is their nature and extent, without considering the purposes they were intended to subserve. Those purposes, it must be noted, reach beyond the mere execution of all powers definitely intrusted to Congress and mentioned in detail. They embrace the execution of all other powers vested by the Constitution in the government of the United States, or in any department or officer thereof. It certainly was intended to confer upon the government the power of self-preservation. * * *

* * * * *

And here it is to be observed it is not indispensable to the existence of any power claimed for the Federal government that it can be found specified in the words of the Constitution, or clearly and directly traceable to some one of the specified powers. Its existence may be deduced fairly from more than one of the substantive powers expressly defined, or from them all combined. It is allowable to group together any num-

> ber of them and infer from them all that the power claimed has been conferred. Such a treatment of the Constitution is recognized by its own provisions. * * *
>
> And it is of importance to observe that Congress has often exercised, without question, powers that are not expressly given nor ancillary to any single enumerated power. Powers thus exercised are what are called by Judge Story in his Commentaries on the Constitution, resulting powers, arising from the aggregate powers of the government. * * * [*Legal Tender Cases,* 12 Wall. 532–535.]

In *Juilliard* v. *Greenman,* at pp. 449–450, the Court said:

> Congress, as the legislature of a sovereign nation, being expressly empowered by the Constitution "to lay and collect taxes, to pay the debts and provide for the common defence and general welfare of the United States," and "to borrow money on the credit of the United States," and "to coin money and regulate the value thereof and of foreign coin;" and being clearly authorized, as incidental to the exercise of those great powers, to emit bills of credit, to charter national banks, and to provide a national currency for the whole people, in the form of coin, treasury notes, and national-bank bills; and the power to make the notes of the government a legal tender in payment of

> private debts being one of the powers belonging to sovereignty in other civilized nations, and not expressly withheld from Congress by the Constitution; we are irresistibly impelled to the conclusion that the impressing upon the treasury notes of the United States the quality of being a legal tender in payment of private debts is an appropriate means, conducive and plainly adapted to the execution of the undoubted powers of Congress, consistent with the letter and spirit of the Constitution, and therefore, within the meaning of that instrument, "necessary and proper for carrying into execution the powers vested by this Constitution in the government of the United States."

We have not lost sight of the contention of respondents that the Congress acted improvidently, that property rights cannot be maintained or prosperity restored upon a policy of repudiation and that the measure adopted is economically unsound, a view vigorously presented in the Congress and in the press when the Joint Resolution was under consideration. Conversely, others, of at least equal probity and wisdom, maintained that the guarantees of liberty and of property, as well as the essentials of justice, do not inexorably require, at all costs and under all circumstances, the strict enforcement of private obligations affected with a public interest; and that this Resolution was

one of the greatest of the instrumentalities placed by the Congress in the hands of the President to enable him to deal with pressing national needs, the existence of which no one denied. The better answer, however, is that this Court will not narrow the discretion of the Congress to one view or the other, so long as the means employed is not clearly arbitrary or capricious, but as it said in *Juilliard* v. *Greenman, supra,* p. 450:

> Such being our conclusion in matter of law, the question whether at any particular time, in war or in peace, the exigency is such, by reason of unusual and pressing demands on the resources of the government, or of the inadequacy of the supply of gold and silver coin to furnish the currency needed for the uses of the government and of the people, that it is, as matter of fact, wise and expedient to resort to this means, is a political question, to be determined by Congress when the question of exigency arises, and not a judicial question, to be afterwards passed upon by the courts. * * *

CONCLUSION

We respectfully submit, therefore, that the decree entered by the court below is right and that it ought to be affirmed.

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ANGUS D. MACLEAN,
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DECEMBER 1934.

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In the Supreme Court of the United States

OCTOBER TERM, 1934

NOS. 471 AND 472

UNITED STATES OF AMERICA, RECONSTRUCTION FINANCE CORPORATION, et al., petitioners

v.

BANKERS TRUST COMPANY AND WILLIAM H. BIXBY, trustees

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

NO. 531

F. EUGENE NORTZ, PETITIONER

v.

UNITED STATES

NO. 532

JOHN M. PERRY, PETITIONER

v.

UNITED STATES

ON CERTIFICATES FROM THE COURT OF CLAIMS

APPENDIX TO BRIEFS FOR THE GOVERNMENT IN THE ABOVE CASES

PROCLAMATION OF THE PRESIDENT, MARCH 6, 1933[1]
(48 STAT., "PROCLAMATIONS OF THE PRESIDENT OF THE UNITED STATES", P. 1)

[BANK HOLIDAY, MARCH 6-9, 1933, INCLUSIVE]

WHEREAS there have been heavy and unwarranted withdrawals of gold and currency from our banking institutions for the purpose of hoarding; and

WHEREAS continuous and increasingly extensive speculative activity abroad in foreign exchange has resulted in severe drains on the Nation's stocks of gold; and

WHEREAS these conditions have created a national emergency; and

WHEREAS it is in the best interests of all bank depositors that a period of respite be provided with a view to preventing further hoarding of coin, bullion or currency or speculation in foreign exchange and permitting the application of appropriate measures to protect the interests of our people; and

WHEREAS it is provided in Section 5 (*b*) of the Act of October 6, 1917 (40 Stat. L. 411), as amended, "That the President may investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange and the export, hoarding, melting, or earmarkings of gold or silver coin or bullion or currency * * *"; and

---

[1] Certified copies of the Proclamations, Orders, Regulations, and Instructions contained herein have been filed with the Clerk of the Court.

WHEREAS it is provided in Section 16 of the said Act "that whoever shall willfully violate any of the provisions of this Act or of any license, rule, or regulation issued thereunder, and whoever shall willfully violate, neglect, or refuse to comply with any order of the President issued in compliance with the provisions of this Act, shall, upon conviction, be fined not more than $10,000, or, if a natural person, imprisoned for not more than ten years, or both; * * *";

NOW, THEREFORE, I, Franklin D. Roosevelt, President of the United States of America, in view of such national emergency and by virtue of the authority vested in me by said Act and in order to prevent the export, hoarding, or earmarking of gold or silver coin or bullion or currency, do hereby proclaim, order, direct and declare that from Monday, the sixth day of March, to Thursday, the ninth day of March, Nineteen Hundred and Thirty Three, both dates inclusive, there shall be maintained and observed by all banking institutions and all branches thereof located in the United States of America, including the territories and insular possessions, a bank holiday, and that during said period all banking transactions shall be suspended. During such holiday, excepting as hereinafter provided, no such banking institution or branch shall pay out, export, earmark, or permit the withdrawal or transfer in any manner or by any device whatsoever, of any gold or silver coin or bullion or currency or take any other action which might facilitate the hoarding thereof; nor shall any such banking institution or branch pay out deposits, make loans or discounts, deal in foreign exchange, transfer credits from the United States to any place

abroad, or transact any other banking business whatsoever.

During such holiday, the Secretary of the Treasury, with the approval of the President and under such regulations as he may prescribe, is authorized and empowered (*a*) to permit any or all of such banking institutions to perform any or all of the usual banking functions, (*b*) to direct, require or permit the issuance of clearing house certificates or other evidences of claims against assets of banking institutions, and (*c*) to authorize and direct the creation in such banking institutions of special trust accounts for the receipt of new deposits which shall be subject to withdrawal on demand without any restriction or limitation and shall be kept separately in cash or on deposit in Federal Reserve Banks or invested in obligations of the United States.

As used in this order the term "banking institutions" shall include all Federal Reserve banks, national banking associations, banks, trust companies, savings banks, building and loan associations, credit unions, or other corporations, partnerships, associations or persons, engaged in the business of receiving deposits, making loans, discounting business paper, or transacting any other form of banking business.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done in the City of Washington this 6th day of March—1 A. M. in the year of our Lord One Thou-

sand Nine Hundred and Thirty-three, and of the Independence of the United States the One Hundred and Fifty-seventh.

[SEAL] FRANKLIN D. ROOSEVELT

By the President:

CORDELL HULL,

Secretary of State.

[No. 2039]

INSTRUCTIONS BY SECRETARY OF THE TREASURY TO TREASURER OF THE UNITED STATES

MARCH 6, 1933.

THE HONORABLE THE TREASURER OF THE UNITED STATES.

SIR: The President of the United States has issued an Executive order declaring a complete bank holiday in the United States for the period Monday, March 6, to Thursday, March 9, 1933, both dates inclusive, subject to such exceptions as may be permitted under regulations to be prescribed by the Secretary of the Treasury with the approval of the President.

During the continuance of such bank holiday, unless otherwise directed, you will observe the following instructions:

(1) Payments in gold in any form will be made only under license issued by the Secretary of the Treasury. This does not prohibit the deposit of gold and the usual payment therefor.

(2) Pay, as usual, all checks drawn on the Treasurer of the United States, but not in gold. When requested you are authorized to ship paper currency, other than gold certificates, in payment of checks.

(3) Continue the usual currency transactions between the Treasury and the Federal Reserve Banks and branches.

Respectfully,

(Signed) W. H. Woodin,
Secretary of the Treasury.

Approved: March 6, 1933.

(Signed) Franklin D. Roosevelt,
The White House.

Instructions by Secretary of the Treasury to Director of the Mint

March 6, 1933.

The Honorable the Director of the Mint.

Sir: The President of the United States has issued an Executive Order declaring a complete bank holiday in the United States for the period Monday, March 6, to Thursday, March 9, 1933, both dates inclusive, subject to such exceptions as may be permitted under regulations to be prescribed by the Secretary of the Treasury with the approval of the President.

During the continuance of such bank holiday, unless otherwise directed, you are requested to instruct all mint and assay offices to pay gold in any form only under license issued by the Secretary of the Treasury. This does not prohibit the deposit of gold and the usual payment therefor.

Respectfully,

(Signed) W. H. Woodin,
Secretary of the Treasury.

Approved: March 6, 1933.

(Signed) Franklin D. Roosevelt,
The White House.

ACT OF MARCH 9, 1933, C. 1, 48 STAT. 1

AN ACT To provide relief in the existing national emergency in banking, and for other purposes:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress hereby declares that a serious emergency exists and that it is imperatively necessary speedily to put into effect remedies of uniform national application.

TITLE I

SECTION 1. The actions, regulations, rules, licenses, orders and proclamations heretofore or hereafter taken, promulgated, made, or issued by the President of the United States or the Secretary of the Treasury since March 4, 1933, pursuant to the authority conferred by subdivision (b) of section 5 of the Act of October 6, 1917, as amended, are hereby approved and confirmed.

SEC. 2. Subdivision (b) of section 5 of the Act of October 6, 1917 (40 Stat. L. 411), as amended, is hereby amended to read as follows:

"(b) During time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange, transfers of credit between or payments by banking institutions as defined by the President, and export, hoarding, melting, or earmarking of gold or silver coin or bullion or currency, by any person within the United States or any place subject to the jurisdiction thereof; and the President may require any person engaged in any transaction referred to in this

subdivision to furnish under oath, complete information relative thereto, including the production of any books of account, contracts, letters or other papers in connection therewith in the custody or control of such person, either before or after such transaction is completed. Whoever willfully violates any of the provisions of this subdivision or of any license, order, rule or regulation issued thereunder, shall, upon conviction, be fined not more than $10,000, or if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both. As used in this subdivision the term 'person' means an individual, partnership, association, or corporation."

SEC. 3. Section 11 of the Federal Reserve Act is amended by adding at the end thereof the following new subsection:

"(n) Whenever in the judgment of the Secretary of the Treasury such action is necessary to protect the currency system of the United States, the Secretary of the Treasury, in his discretion, may require any or all individuals, partnerships, associations and corporations to pay and deliver to the Treasurer of the United States any or all gold coin, gold bullion, and gold certificates owned by such individuals, partnerships, associations and corporations. Upon receipt of such gold coin, gold bullion or gold certificates, the Secretary of the Treasury shall pay therefor an equivalent amount of any other form of coin or currency coined or issued under the laws of the United States. The Secretary of the Treasury shall pay all costs of the trans-

portation of such gold bullion, gold certificates, coin, or currency, including the cost of insurance, protection, and such other incidental costs as may be reasonably necessary. Any individual, partnership, association or corporation failing to comply with any requirement of the Secretary of the Treasury made under this subsection shall be subject to a penalty equal to twice the value of the gold or gold certificates in respect of which such failure occurred, and such penalty may be collected by the Secretary of the Treasury by suit or otherwise."

SEC. 4. In order to provide for the safer and more effective operation of the National Banking System and the Federal Reserve System, to preserve for the people the full benefits of the currency provided for by the Congress through the National Banking System and the Federal Reserve System, and to relieve interstate commerce of the burdens and obstructions resulting from the receipt on an unsound or unsafe basis of deposits subject to withdrawal by check, during such emergency period as the President of the United States by proclamation may prescribe, no member bank of the Federal Reserve System shall transact any banking business except to such extent and subject to such regulations, limitations, and restrictions as may be prescribed by the Secretary of the Treasury, with the approval of the President. Any individual, partnership, corporation, or association, or any director, officer or employee thereof, violating any of the provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $10,000 or, if a natural person, may, in addition to such fine, be imprisoned for a term not exceeding ten years.

Each day that any such violation continues shall be deemed a separate offense.

* * * * *

PROCLAMATION OF THE PRESIDENT, MARCH 9, 1933 (48 STAT., "PROCLAMATIONS OF THE PRESIDENT", 48 STAT., P. 3)

[CONTINUING IN FORCE THE BANK HOLIDAY PROCLAMATION OF MARCH 6, 1933]

WHEREAS, on March 6, 1933, I, FRANKLIN D. ROOSEVELT, President of the United States of America, by Proclamation declared the existence of a national emergency and proclaimed a bank holiday extending from Monday the 6th day of March to Thursday the 9th day of March, 1933, both dates inclusive, in order to prevent the export, hoarding or earmarking of gold or silver coin, or bullion or currency, or speculation in foreign exchange; and

WHEREAS, under the Act of March 9, 1933, all Proclamations heretofore or hereafter issued by the President pursuant to the authority conferred by section 5 (*b*) of the Act of October 6, 1917, as amended, are approved and confirmed; and

WHEREAS, said national emergency still continues, and it is necessary to take further measures extending beyond March 9, 1933, in order to accomplish such purposes:

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, in view of such continuing national emergency and by virtue of the authority vested in me by Section 5(*b*) of the Act of October 6, 1917 (40 Stat. L., 411) as amended by the Act of March 9, 1933, do hereby proclaim, order, direct and declare that all the

terms and provisions of said Proclamation of March 6, 1933, and the regulations and orders issued thereunder are hereby continued in full force and effect until further proclamation by the President.

IN WITNESS WHEREOF I have hereunto set my hand and have caused the seal of the United States to be affixed.

Done in the District of Columbia, this 9th day of March, in the Year of our Lord One Thousand Nine Hundred and Thirty-three, and of the Independence of the United States the One Hundredth and Fifty-seventh.

FRANKLIN D. ROOSEVELT

By the President:
CORDELL HULL
Secretary of State.

[No. 2040]

EXECUTIVE ORDER No. 6073, MARCH 10, 1933

[REGULATIONS CONCERNING THE OPERATION OF BANKS]

By virtue of the authority vested in me by Section 5(*b*) of the Act of October 6, 1917 (40 Stat. L., 411) as amended by the Act of March 9, 1933 and by Section 4 of the said Act of March 9, 1933, and by virtue of all other authority vested in me, I hereby issue the following executive order.

The Secretary of the Treasury is authorized and empowered under such regulations as he may prescribe to permit any member bank of the Federal Reserve System and any other banking institution organized under the laws of the United States to perform any or all of their usual banking functions, except as otherwise prohibited.

The appropriate authority having immediate supervision of banking institutions in each State or any place subject to the jurisdiction of the United States is authorized and empowered under such regulations as such authority may prescribe to permit any banking institution in such State or place, other than banking institutions covered by the foregoing paragraph, to perform any or all of their usual banking functions, except as otherwise prohibited.

All banks which are members of the Federal Reserve System, desiring to reopen for the performance of all usual and normal banking functions, except as otherwise prohibited, shall apply for a license therefor to the Secretary of the Treasury. Such application shall be filed immediately through the Federal Reserve Banks. The Federal Reserve Bank shall then transmit such applications to the Secretary of the Treasury. Licenses will be issued by the Federal Reserve Bank upon approval of the Secretary of the Treasury. The Federal Reserve Banks are hereby designated as agents of the Secretary of the Treasury for the receiving of application and the issuance of licenses in his behalf and upon his instructions.

Until further order, no individual, partnership, association, or corporation, including any banking institution, shall export or otherwise remove or permit to be withdrawn from the United States or any place subject to the jurisdiction thereof any gold coin, gold bullion, or gold certificates, except in accordance with regulations prescribed by or under license issued by the Secretary of the Treasury.

No permission to any banking institution to perform any banking functions shall authorize such institution to pay out any gold coin, gold bullion or gold certificates except as authorized by the Secretary of the Treasury, nor to allow withdrawal of any currency for hoarding, nor to engage in any transaction in foreign exchange except such as may be undertaken for legitimate and normal business requirements, for reasonable traveling and other personal requirements, and for the fulfillment of contracts entered into prior to March 6, 1933.

Every Federal Reserve Bank is authorized and instructed to keep itself currently informed as to transactions in foreign exchange entered into or consummated within its district and shall report to the Secretary of the Treasury all transactions in foreign exchange which are prohibited.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE,
March 10, 1933.

REGULATIONS OF SECRETARY OF THE TREASURY, MARCH 13, 1933

Pending the determination by the Treasury Department of a suitable procedure for licensing the delivery of gold for use in trade, profession, or art, Federal Reserve banks are hereby authorized to deliver upon request therefor gold in amounts deemed by such bank to be reasonably required for legitimate and customary uses in trade, profession or art, provided such request is accompanied by affidavit of the person requesting such gold stating

the amount of unmanufactured gold on hand and the facts making it necessary to obtain such gold for the purpose of maintaining employment.

All banks licensed to open for usual and normal functions are permitted to carry out any transaction necessary to complete the delivery of any gold authorized by any Federal Reserve Bank to be delivered in accordance with such request.

W. H. WOODIN,
Secretary of the Treasury.

EXECUTIVE ORDER NO. 6102, APRIL 5, 1933

[FORBIDDING THE HOARDING OF GOLD COIN, GOLD BULLION AND GOLD CERTIFICATES]

By virtue of the authority vested in me by Section 5 (b) of the Act of October 6, 1917, as amended by Section 2 of the Act of March 9, 1933, entitled "An Act to provide relief in the existing national emergency in banking, and for other purposes", in which amendatory Act Congress declared that a serious emergency exists, I, FRANKLIN D. ROOSEVELT, President of the United States of America, do declare that said national emergency still continues to exist and pursuant to said section do hereby prohibit the hoarding of gold coin, gold bullion, and gold certificates within the continental United States by individuals, partnerships, associations and corporations and hereby prescribe the following regulations for carrying out the purposes of this order:

SECTION 1. For the purposes of this regulation, the term "hoarding" means the withdrawal and withholding of gold coin, gold bullion, or gold cer-

tificates from the recognized and customary channels of trade. The term "person" means any individual, partnership, association or corporation.

SEC. 2. All persons are hereby required to deliver on or before May 1, 1933, to a Federal Reserve bank or a branch or agency thereof or to any member bank of the Federal Reserve System all gold coin, gold bullion and gold certificates now owned by them or coming into their ownership on or before April 28, 1933, except the following:

(*a*) Such amount of gold as may be required for legitimate and customary use in industry, profession or art within a reasonable time, including gold prior to refining and stocks of gold in reasonable amounts for the usual trade requirements of owners mining and refining such gold.

(*b*) Gold coin and gold certificates in an amount not exceeding in the aggregate $100.00 belonging to any one person; and gold coins having a recognized special value to collectors of rare and unusual coins.

(*c*) Gold coin and bullion earmarked or held in trust for a recognized foreign government or foreign central bank or the Bank for International Settlements.

(*d*) Gold coin and bullion licensed for other proper transactions (not involving hoarding) including gold coin and bullion imported for reexport or held pending action on applications for export licenses.

SEC. 3. Until otherwise ordered any person becoming the owner of any gold coin, gold bullion, or gold certificates after April 28, 1933, shall, within three days after receipt thereof, deliver the same in the manner prescribed in Section 2; unless

such gold coin, gold bullion or gold certificates are held for any of the purposes specified in paragraphs (*a*), (*b*), or (*c*) of Section 2; or unless such gold coin or gold bullion is held for purposes specified in paragraph (*d*) of Section 2 and the person holding it is, with respect to such gold coin or bullion, a licensee or applicant for license pending action thereon.

SEC. 4. Upon receipt of gold coin, gold bullion, or gold certificates delivered to it in accordance with Sections 2 or 3, the Federal Reserve bank or member bank will pay therefor an equivalent amount of any other form of coin or currency coined or issued under the laws of the United States.

SEC. 5. Member banks shall deliver all gold coin, gold bullion, and gold certificates owned or received by them (other than as exempted under the provisions of Section 2) to the Federal Reserve banks of their respective districts and receive credit or payment therefor.

SEC. 6. The Secretary of the Treasury, out of the sum made available to the President by Section 501 of the Act of March 9, 1933, will in all proper cases pay the reasonable costs of transportation of gold coin, gold bullion, or gold certificates delivered to a member bank or Federal Reserve bank in accordance with Sections 2, 3, or 5 hereof, including the cost of insurance, protection, and such other incidental costs as may be necessary, upon production of satisfactory evidence of such costs. Voucher forms for this purpose may be procured from Federal Reserve banks.

SECTION 7. In cases where the delivery of gold coin, gold bullion or gold certificates by the owners thereof within the time set forth above will involve

extraordinary hardship or difficulty, the Secretary of the Treasury may, in his discretion, extend the time within which such delivery must be made. Applications for such extensions must be made in writing under oath, addressed to the Secretary of the Treasury and filed with a Federal reserve bank. Each application must state the date to which the extension is desired, the amount and location of the gold coin, gold bullion and gold certificates in respect of which such application is made and the facts showing extension to be necessary to avoid extraordinary hardship or difficulty.

SECTION 8. The Secretary of the Treasury is hereby authorized and empowered to issue such further regulations as he may deem necessary to carry out the purposes of this order and to issue licenses thereunder, through such officers or agencies as he may designate, including licenses permitting the Federal reserve banks and member banks of the Federal Reserve System, in return for an equivalent amount of other coin, currency or credit, to deliver, earmark or hold in trust gold coin and bullion to or for persons showing the need for the same for any of the purposes specified in paragraphs (a), (c) and (d) of Section 2 of these regulations.

SECTION 9. Whoever willfully violates any provision of this Executive Order or of these regulations or of any rule, regulation or license issued thereunder may be fined not more than $10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in any such violation may be punished by a like fine, imprisonment, or both.

This order and these regulations may be modified or revoked at any time.

FRANKLIN D. ROOSEVELT

THE WHITE HOUSE,
April 5, 1933.

EXECUTIVE ORDER NO. 6111, APRIL 20, 1933

[RELATING TO FOREIGN EXCHANGE AND THE EARMARKING AND EXPORT OF GOLD COIN OR BULLION OR CURRENCY]

By virtue of the authority vested in me by Section 5(b) of the Act of October 6, 1917, as amended by Section 2 of the Act of March 9, 1933, entitled "An Act to provide relief in the existing national emergency in banking, and for other purposes," in which amendatory Act Congress declared that a serious emergency exists, I, FRANKLIN D. ROOSEVELT, President of the United States of America, do declare that said national emergency still continues to exist and pursuant to said section and by virtue of all other authority vested in me, do hereby issue the following executive order:

1. Until further order, the earmarking for foreign account and the export of gold coin, gold bullion or gold certificates from the United States or any place subject to the jurisdiction thereof are hereby prohibited, except that the Secretary of the Treasury, in his discretion and subject to such regulations as he may prescribe, may issue licenses authorizing the export of gold coin and bullion (a) earmarked or held in trust for a recognized foreign government or foreign central bank or the Bank

for International Settlements, (b) imported for reexport or gold in reasonable amounts for usual trade requirements of refiners importing gold bearing materials under agreement to export gold, (c) actually required for the fulfilment of any contract entered into prior to the date of this order, by an applicant who in obedience to the Executive Order of April 5, 1933 has delivered gold coin, gold bullion or gold certificates, and (d) with the approval of the President, for transactions which he may deem necessary to promote the public interest.

2. Until further order, the Secretary of the Treasury is authorized, through any agency that he may designate, to investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange, transfers of credit from any banking institution within the United States or any place subject to the jurisdiction thereof to any foreign branch or office of such banking institution or to any foreign bank or banker, and the export or withdrawal of currency from the United States or any place subject to the jurisdiction of the United States, by any individual, partnership, association, or corporation within the United States or any place subject to the jurisdiction thereof; and the Secretary of the Treasury may require any individual, partnership, association, or corporation engaged in any transaction referred to herein to furnish under oath, complete information relative thereto, including the production of any books of account, contracts, letters or other papers, in connection therewith in the custody or control of such individual, partnership,

association, or corporation either before or after such transaction is completed.

3. The provisions relating to foreign exchange transactions contained in the Executive Order of March 10, 1933, shall remain in full force and effect except as amended or supplemented by this order and by regulations issued hereunder.

4. Applicants who have gold coin, gold bullion or gold certificates in their possession, or who in obedience to the Executive Order of April 5, 1933 have delivered gold coin, gold bullion or gold certificates shall be entitled to licenses as provided in Section 8 of said Executive Order for amounts not exceeding the equivalent of such coin, bullion or certificates held or delivered. The Secretary may in his discretion issue or decline to issue any other licenses under said Executive Order, which shall in all other respects remain in full force and effect.

5. Whoever willfully violates any provision of this Executive Order or of any rule, regulation or license issued thereunder may be fined not more than $10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in any such violation may be punished by a like fine, imprisonment, or both.

This order may be modified or revoked at any time.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE,
April 20, 1933.

INSTRUCTIONS BY SECRETARY OF TREASURY TO GOVERNORS OF FEDERAL RESERVE BANKS

April 28, 1933.

To Governors, Federal Reserve Banks—

Boston, Mass.
New York, N. Y.
Philadelphia, Pa.
Cleveland, Ohio
Richmond, Va.
Atlanta, Ga.
Chicago, Ill.
St. Louis, Mo.
Minneapolis, Minn.
Kansas City, Mo.
Dallas, Tex.
San Francisco, Calif.

Until further notice the Secretary of the Treasury will grant no licenses for the acquisition of gold, gold coin or bullion by persons making application for the same under the Executive Order of April 5, 1933, for the purpose of meeting maturing obligations calling for payment in gold coin or bullion, within the United States or elsewhere, except where such applicants have surrendered gold coin, gold bullion or gold certificates in obedience to the Executive Order of April 5, 1933.

BALLANTINE
(Initialed) G. A. B.

Private Wire.

Regulations of the Secretary of the Treasury, April 29, 1933

[Relating to licensing the purchase and export of gold]

Article I. Miscellaneous Provisions

Sec. 1. *Authority for Regulations.*—In pursuance of the provisions of section 5 (*b*) of the Act of October 6, 1917, as amended by section 2 of the Act of March 9, 1933, and the Executive Orders of the President dated March 10, 1933, April 5, 1933, and April 20, 1933, these regulations are prescribed.

Sec. 2. *Definitions.*—For the purposes of these regulations the term "person" means an individual, partnership, association or corporation; and the term "United States" means the continental United States, including Alaska.

Sec. 3. *Licenses Non-Transferable.*—Licenses or permits issued or granted under these regulations shall not be transferred.

Sec. 4. *Scope.*—These regulations shall be operative within the United States as defined, unless otherwise indicated.

Sec. 5. *Penalties.*—Whoever willfully violates any provision of these regulations or of any license issued hereunder may be fined not more than $10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director or agent of any corporation who knowingly participates in any such violation may be punished by a like fine, imprisonment, or both.

Article II. Purchase of Gold for Use in Industry, Profession or Art

Sec. 1. *Eligible Applicants.*—Any person having a legitimate and customary use for gold in indus-

try, profession or art (including research and scientific work), or any person customarily supplying gold to others for such use (hereinafter called a "dealer"), may file with a Federal reserve bank an application to purchase such quantity of gold as may be required for legitimate and customary use within a reasonable time.

SEC. 2. *Applications.*—Such application shall be filed in duplicate, executed under oath and verified before an officer duly authorized to administer oaths, and shall contain (a) the name and address of the applicant, (b) the industry, profession or art or business in which the applicant is engaged, (c) the amount of gold usually required for use in the applicant's business for a period of 90 days, (d) the amount of gold used or sold during the preceding calendar year, (e) the amount and a description of all gold on hand at the date of the application, (f) the amount of gold applied for, (g) a statement that the applicant will use such gold as he may be permitted to purchase only for the legitimate and customary requirements of industry, profession, or art, or for sale exclusively in industry, profession, or art, and (h) a statement that no other application is pending.

SEC. 3. *Purchase of Gold.*—Upon receipt of the application and after making such investigation of the case as it may deem advisable, the Federal reserve bank, if satisfied that the gold is necessary for the legitimate and customary requirements of the applicant's business, industry, profession or art, within a reasonable time, may permit the applicant to purchase such quantity of gold (not in excess of the amount applied for) as may be necessary for

such use upon payment therefor of an equivalent amount of coin or currency coined or issued under the laws of the United States. The applicant shall keep an exact record of the disposition of such gold, and, in the case of a dealer furnishing gold for use in industry, profession or art, such dealer shall keep a record which shall show the amounts and dates of sales and the names and addresses of the purchasers. Such records shall be available for examination by a representative of the Treasury Department for at least one year after the date of the disposition of the gold. The gold so purchased shall be used or disposed of only in accordance with this Article and the Executive Order of April 5, 1933. Dealers withdrawing gold under this Article shall require of the persons who purchase gold from them an affidavit that the gold so purchased will be used exclusively in the industry, profession, or art in which such purchasers are engaged.

SEC. 4. *Prior Regulation Revoked.*—Emergency Banking Regulation No. 25, issued March 13, 1933, is hereby revoked.

ARTICLE III. EXPORT OF GOLD COIN OR GOLD BULLION

SEC. 1. *License Required.*—No gold coin, gold bullion or gold certificates shall be exported from the United States or any place subject to the jurisdiction thereof, or earmarked for foreign account unless a license therefor shall first have been obtained from the Secretary of the Treasury in accordance with this Article or Article IV of these regulations. Licenses may be issued, in the dis-

cretion of the Secretary, authorizng the export of gold coin and gold bullion:

(a) earmarked or held in trust for a recognized foreign government or foreign central bank or the Bank of International Settlements;

(b) imported for reexport;[2]

(c) actually required for the fulfilment of any contract calling for payment or delivery of gold coin or bullion, entered into prior to April 20, 1933, by an applicant who in obedience to the Executive Order of April 5, 1933, has delivered gold coin, gold bullion or gold certificates in accordance with such order; or

(d) with the approval of the President, for transactions which he may deem necessary to promote the public interest.

SEC. 2. *Application for Licenses.*—Application for license under Section 1 to export from the United States or any place subject to the jurisdiction thereof any gold coin or gold bullion shall be made to the Secretary of the Treasury. Each such application shall be executed in duplicate under oath and verified before an officer duly authorized to administer oaths, and shall state in detail (a) the name and address of the applicant, (b) the name and address of the owner of the gold to be exported, (c) the amount and a description of gold coin or gold bullion and the location thereof, (d) the port from which export will be made, (e) the name and address of the consignee, and (f) the nature of the

[2] Export of gold by refiners importing gold-bearing materials is covered by Article IV of these regulations.

transaction and the facts making necessary the export. In the case of an application for a license under section 1 (c) of this Article, the application, in addition to the above, shall state in detail, (1) the amount respectively of the gold coin, gold bullion or gold certificates delivered in obedience to the Executive Order of April 5, 1933, and the date and place of such delivery, and (2) the amount of gold coin or gold bullion actually required for the fulfilment of the contract. A certified copy of the contract or obligation shall accompany the application.

SEC. 3. *Filing of Application.*—The application shall be filed with a Federal reserve bank, and such bank, after making such investigation of the case as it may deem necessary, shall transmit the original of such application to the Secretary of the Treasury, together with (a) such supplemental information as it may deem appropriate and (b) a recommendation as to whether the license should be granted or denied. A copy of the application shall be retained by the Federal reserve bank for its records.

SEC. 4. *Issuance of License.*—If the Secretary of the Treasury in his discretion determines to grant a license upon an application filed under Sec. 3, he will authorize the Federal reserve bank through which the application was transmitted to issue on his behalf a license to export a specified amount of gold coin or gold bullion, and such bank shall thereupon issue such license to the applicant. If the license applied for is not granted, the bank through which the application was transmitted will be advised and such bank shall thereupon so notify the applicant.

SEC. 5. *License.*—Each license for the export of gold coin or bullion shall be numbered serially and shall bear (*a*) the date of issue, (*b*) the name and address of the licensee, (*c*) the name and address of the consignee, (*d*) the amount and description of the gold licensed, (*e*) the port of export, and (*f*) a statement "This license shall expire 15 days from date of issue."

SEC. 6. *Notification of Issuance of License.*—At the time the license is issued, the issuing Federal reserve bank shall transmit a copy thereof to the Collector of Customs at the port of export designated thereon. No collector of Customs shall permit the export of any gold coin or bullion under this Article except upon surrender of a license to export, a copy of which has been received by him from the Federal reserve bank issuing such license.

SEC. 7. *Expiration of License.*—All licenses to export gold coin or bullion issued under this Article shall expire fifteen days after date of issue and any person holding a license who fails to export gold coin or bullion in accordance with the terms of the license shall forthwith deliver such gold coin or bullion to a Federal reserve bank.

ARTICLE IV. IMPORT FOR SMELTING AND/OR REFINING AND EXPORT

SEC. 1. *Notation upon Entry.*—Upon the formal entry into the United States of gold-bearing ores, or any other gold-bearing materials imported into the United States for smelting and/or refining under an agreement providing for the export of gold bullion, the importer shall notify the Collector

of Customs at the port where the gold-bearing ore or material is formally entered that the importation is made under such agreement. The Collector shall make a notation on the entry to this effect and forward a copy of the entry to the United States Assay Office at New York, New York, or to the United States Mint at San Francisco, California, whichever is designated by the importer.

SEC. 2. *Sampling and Assaying.*—*Promptly upon* the receipt of each importation of gold-bearing ore or material at the plant where it is first to be treated, it shall be weighed, sampled and assayed for gold content. A reserve commercial sample shall be retained at such plant for at least one year from the date the importation was received by the plant unless the assay is sooner verified by the Treasury Department.

SEC. 3. *Plant Records.*—The importer shall cause an exact record, covering each importation, to be kept at the plant of first treatment. The record shall show the gross wet weight of the importation, the weight of containers, if any, the net wet weight, the percentage and weight of moisture, the net dry weight, the gold content shown by the settlement assay, and the amount of gold bullion required to be exported under the agreement. An attested copy of such record shall be filed promptly with the Assay Office or the Mint, whichever has been designated to receive a copy of the entry.

SEC. 4. *Application for Export License.*—Not later than fifteen days from the date of entry, the importer shall file an application with the Assay Office or the Mint, whichever has been designated to receive a copy of the entry, for a license to ex-

port gold bullion not in excess of the amount shown by the Settlement Sheet covering the importation. Such application shall be filed in duplicate, executed under oath and verified before an officer duly authorized to administer oaths, and shall show (*a*) the name and address of the applicant, (*b*) the port at which the importation was formally entered, (*c*) the entry number, (*d*) the date of entry, (*e*) the plant at which the importation was first treated, (*f*) the gross wet weight, (*g*) the weight of the containers, if any, (*h*) the net wet weight, (*i*) the percentage and weight of moisture, (*j*) the net dry weight, (*k*) the gold content, (*l*) the amount of gold bullion required to be exported under the agreement, and (*m*) the name and address of the proposed consignee of the exportation. The application shall be accompanied by two duly attested copies of the Settlement Sheet.

SEC. 5. *Issuance of Serial Numbered Certificate.*—If the Superintendent of the Assay Office or of the Mint is satisfied as to the accuracy of the data shown on such application, he shall issue to the importer a dated Serial Numbered Certificate which shall show the amount of gold specified by the application and the amount specified by the Settlement Sheet. The Director of the Mint shall prescribe the form of such certificate.

SEC. 6. *Issuance of Export License.*—Upon delivery to the Assay Office or the Mint, within 120 days from the date it was issued, of the Serial Numbered Certificate the Superintendent of the Assay Office or Mint shall issue to the importer a license to export gold bullion in the amount applied for but not in excess of the amount specified by the Settlement Sheet as shown on such certificate.

SEC. 7. *Licenses.*—Each license for the export of gold bullion under this Article shall be numbered serially and shall bear (*a*) the date of issue, (*b*) the name and address of the licensee, (*c*) the name and address of the consignee, (*d*) the amount and description of the gold licensed, (*e*) the port of export, and (*f*) a statement "This license shall expire 15 days from date of issue."

SEC. 8. *Notification of Issuance of License.*—At the time the license is issued, the issuing assay office or mint shall transmit a copy thereof to the Collector of Customs at the port of export designated thereon. No Collector of Customs shall permit the export of any gold bullion under this article except upon surrender of a license to export, a copy of which has been received by him from the assay office or mint issuing the license.

SEC. 9. *Expiration of License.*—All licenses to export gold bullion issued under this article shall expire 15 days after date of issue and any person holding a license who fails to export the gold bullion in accordance with the terms of the license shall forthwith deliver such bullion to a Federal reserve bank.

ARTICLE V. ACQUISITION OR RETENTION OF GOLD COIN, GOLD BULLION OR GOLD CERTIFICATES FOR PROPER TRANSACTIONS NOT INVOLVING HOARDING

SECTION 1. *Licenses for Proper Transactions and for Purposes not Covered in Preceding Articles.*—Any person showing the need for gold coin or gold bullion for a proper transaction not involving hoarding or for gold coin or gold bullion for a purpose specified in the Executive Order of April 5,

1933, and not covered by the foregoing Articles of these Regulations, may make application to the Secretary of the Treasury for a license to purchase, or if such coin or bullion is already in his possession, to retain such coin or bullion, in amounts as may be reasonably necessary for such proper transaction or purpose. Applications shall be filed with any Federal reserve bank. The application shall be filed in duplicate, executed under oath and verified before an officer duly authorized to administer oaths and shall contain (*a*) the name and address of the applicant, (*b*) the amount of gold coin or gold bullion desired to be purchased or retained, (*c*) the amount and description of the gold coin or bullion on hand, if any, at the date of the application, (*d*) the proper transaction or purpose to which the gold coin or gold bullion will be devoted and the facts making necessary its purchase or retention, (*e*) such other facts as will enable the Secretary of the Treasury to determine whether the transaction is proper, and (*f*) a statement that the applicant will use such gold coin or gold bullion as he may be permitted to purchase or retain only for the transaction or purpose set forth in the application. In the case of an applicant for a license who has delivered in obedience to the Executive Order of April 5, 1933, gold coin, gold bullion or gold certificates the application, in addition to the above, shall state in detail (1) the amount of gold coin, gold bullion or gold certificates delivered in obedience to the Executive Order of April 5, 1933, (2) the date of such delivery, and (3) the bank at which delivered.

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SEC. 2. *Disposition of Application.*—On the receipt of any such application, the Federal reserve bank shall make such investigation of the case as it may deem advisable and shall transmit to the Secretary of the Treasury the original of such application, together with (*a*) any supplemental information it may deem appropriate and (*b*) a recommendation whether a license should be granted or denied. The Federal reserve bank shall retain a copy of the application for its records.

SEC. 3. *Granting or Denial of the License.*—Upon receipt of the original application and the recommendation of the Federal reserve bank transmitting it, the Secretary of the Treasury will grant or deny the license. A license will be granted on application for the retention or acquisition of gold coin or bullion made by any person showing the need for such gold coin or bullion in accordance with the provisions of section 8 of the Executive Order of April 5, 1933, in cases where such person has gold coin, gold bullion, or gold certificates in his possession, or in obedience to said Executive Order, has delivered such coin, bullion or certificates. A license so granted shall be for an amount of gold coin or bullion not exceeding the amount of such coin, bullion or certificates held or delivered. When the issuance of a license is approved by the Secretary of the Treasury the Federal reserve bank through which application was made, will issue a license to the applicant. If denied, the Federal reserve bank will be so advised and shall immediately notify the applicant. The decision of the Secretary of the Treasury shall be final. The Federal reserve bank shall note upon the retained copy of the application whether or not a license has been

granted, and, if granted, the date of the license and the amount of the gold coin or gold bullion covered thereby.

SEC. 4. *Acquisition of Gold.*—Upon presentation of a license for the acquisition of gold coin or bullion to a Federal reserve bank, such bank shall deliver to the licensee the amount of gold coin or gold bullion authorized in such license upon payment therefor in an equivalent amount of any form of coin or currency coined or issued under the laws of the United States.

SEC. 5. *Reports Required on the Disposition of Gold Coin or Bullion.*—Any person holding a license for the retention or acquisition of gold coin or bullion issued under this Article, who shall at any time dispose of such gold coin or bullion in accordance with the terms of the license or otherwise, shall immediately file a written report in duplicate with the Federal reserve bank through which the license was issued. Such report shall be executed under oath and verified before an officer duly authorized to administer oaths and shall contain (*a*) the names and addresses of the person or persons to whom such gold coin or bullion was delivered, (*b*) the amounts thereof and whether gold coin or gold bullion and (*c*) the reason for such delivery. On the receipt of any such report, the Federal reserve bank receiving it shall immediately transmit the original to the Secretary of the Treasury in Washington and shall retain a copy for its records. Upon the transfer of any gold coin or bullion by a person licensed to retain or acquire the same, such licensee shall advise the transferee of the provisions of the Executive Order of April 5, 1933, and of the penalties for its violation, and such transferee shall de-

liver such gold coin or bullion so received to a Federal reserve bank or branch or agent thereof or any member bank of the Federal Reserve System in accordance with the Executive Order of April 5, 1933, and shall be subject to the penalties of said Executive Order for any violation thereof.

These regulations may be supplemented, modified or revoked at any time.

W. H. WOODIN,
Secretary of the Treasury.

AGRICULTURAL ADJUSTMENT ACT OF MAY 12, 1933

(c. 25, 48 Stat. 51–53)

* * * * *

TITLE III—FINANCING—AND EXERCISING POWER CONFERRED BY SECTION 8 OF ARTICLE I OF THE CONSTITUTION: TO COIN MONEY AND TO REGULATE THE VALUE THEREOF

SEC. 43. Whenever the President finds, upon investigation, that (1) the foreign commerce of the United States is adversely affected by reason of the depreciation in value of the currency of any other government or governments in relation to the present standard value of gold, or (2) action under this section is necessary in order to regulate and maintain the parity of currency issues of the United States, or (3) an economic emergency requires an expansion of credit, or (4) an expansion of credit is necessary to secure by international agreement a stabilization at proper levels of the currencies

of various governments, the President is authorized, in his discretion—

(a) To direct the Secretary of the Treasury to enter into agreements with the several Federal Reserve banks and with the Federal Reserve Board whereby the Federal Reserve Board will, and it is hereby authorized to, notwithstanding any provisions of law or rules and regulations to the contrary, permit such reserve banks to agree that they will, (1) conduct, pursuant to existing law, throughout specified periods, open market operations in obligations of the United States Government or corporations in which the United States is the majority stockholder, and (2) purchase directly and hold in portfolio for an agreed period or periods of time Treasury bills or other obligations of the United States Government in an aggregate sum of $3,000,000,000 in addition to those they may then hold, unless prior to the termination of such period or periods the Secretary shall consent to their sale. No suspension of reserve requirements of the Federal Reserve banks, under the terms of section 11(c) of the Federal Reserve Act, necessitated by reason of operations under this section, shall require the imposition of the graduated tax upon any deficiency in reserves as provided in said section 11(c). Nor shall it require any automatic increase in the rates of interest or discount charged by any Federal Reserve bank, as otherwise specified in that section. The Federal Reserve Board, with the approval of the Secretary of the Treasury, may require the Federal Reserve banks to take such action as may be necessary, in the judgment of the Board

and of the Secretary of the Treasury, to prevent undue credit expansion.

(b) If the Secretary, when directed by the President, is unable to secure the assent of the several Federal Reserve banks and the Federal Reserve Board to the agreements authorized in this section, or if operations under the above provisions prove to be inadequate to meet the purposes of this section, or if for any other reason additional measures are required in the judgment of the President to meet such purposes, then the President is authorized—

(1) To direct the Secretary of the Treasury to cause to be issued in such amount or amounts as he may from time to time order, United States notes, as provided in the Act entitled "An Act to authorize the issue of United States notes and for the redemption of funding thereof and for funding the floating debt of the United States", approved February 25, 1862, and Acts supplementary thereto and amendatory thereof, in the same size and of similar color to the Federal Reserve notes heretofore issued and in denominations of $1, $5, $10, $20, $50, $100, $500, $1,000, and $10,000; but notes issued under this subsection shall be issued only for the purpose of meeting maturing Federal obligations to repay sums borrowed by the United States and for purchasing United States bonds and other interest-bearing obligations of the United States: *Provided*, That when any such notes are used for such purpose the bond or other obligation so acquired or taken up shall be retired and canceled. Such notes shall be issued at such times and in such amounts as the President may approve but the ag-

gregate amount of such notes outstanding at any time shall not exceed $3,000,000,000. There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, an amount sufficient to enable the Secretary of the Treasury to retire and cancel 4 per centum annually of such outstanding notes, and the Secretary of the Treasury is hereby directed to retire and cancel annually 4 per centum of such outstanding notes. Such notes and all other coins and currencies heretofore or hereafter coined or issued by or under the authority of the United States shall be legal tender for all debts public and private.

(2) By proclamation to fix the weight of the gold dollar in grains nine-tenths fine and also to fix the weight of the silver dollar in grains nine-tenths fine at a definite fixed ratio in relation to the gold dollar at such amounts as he finds necessary from his investigation to stabilize domestic prices or to protect the foreign commerce against the adverse effect of depreciated foreign currencies, and to provide for the unlimited coinage of such gold and silver at the ratio so fixed, or in case the Government of the United States enters into an agreement with any government or governments under the terms of which the ratio between the value of gold and other currency issued by the United States and by any such government or governments is established, the President may fix the weight of the gold dollar in accordance with the ratio so agreed upon, and such gold dollar, the weight of which is so fixed, shall be the standard unit of value, and all forms of money issued or coined by the United States shall be maintained at a parity with this standard and it shall be

the duty of the Secretary of the Treasury to maintain such parity, but in no event shall the weight of the gold dollar be fixed so as to reduce its present weight by more than 50 per centum.

SEC. 44. The Secretary of the Treasury, with the approval of the President, is hereby authorized to make and promulgate rules and regulations covering any action taken or to be taken by the President under subsection (a) or (b) of section 43.

* * * * *

PUBLIC RESOLUTION, NO. 10, 73D CONGRESS, APPROVED JUNE 5, 1933 (C. 48, 48 STAT. 112)

Joint Resolution To assure uniform value to the coins and currencies of the United States

Whereas the holding of or dealing in gold affect the public interest, and are therefore subject to proper regulation and restriction; and

Whereas the existing emergency has disclosed that provisions of obligations which purport to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby, obstruct the power of the Congress to regulate the value of the money of the United States, and are inconsistent with the declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in the payment of debts. Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) every provision con-

tained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. Any such provision contained in any law authorizing obligations to be issued by or under authority of the United States, is hereby repealed, but the repeal of any such provision shall not invalidate any other provision or authority contained in such law.

(b) As used in this resolution, the term "obligation" means an obligation (including every obligation of and to the United States, excepting currency) payable in money of the United States; and the term "coin or currency" means coin or currency of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations.

SEC. 2. The last sentence of paragraph (1) of subsection (b) of section 43 of the Act entitled "An Act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation

of joint-stock land banks, and for other purposes", approved May 12, 1933, is amended to read as follows:

"All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations) heretofore or hereafter coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues, except that gold coins, when below the standard weight and limit of tolerance provided by law for the single piece, shall be legal tender only at valuation in proportion to their actual weight."

EXECUTIVE ORDER NO. 6260, AUGUST 28, 1933

[RELATING TO THE HOARDING, EXPORT, AND EARMARKING OF GOLD COIN, BULLION, OR CURRENCY, AND TO TRANSACTIONS IN FOREIGN EXCHANGE]

By virtue of the authority vested in me by Section 5 (b) of the Act of October 6, 1917, as amended by Section 2 of the Act of March 9, 1933, entitled "An Act to Provide Relief in the Existing National Emergency in Banking and for other Purposes", I, FRANKLIN D. ROOSEVELT, PRESIDENT OF THE UNITED STATES OF AMERICA, do declare that a period of national emergency exists, and by virtue of said authority and of all other authority vested in me, do hereby prescribe the following provisions for the investigation and regulation of the hoarding, earmarking, and export of gold coin, gold bullion, and gold certificates by any person within the United States or any place subject to the jurisdiction thereof; and for the investigation and regulation of

transactions in foreign exchange and transfers of credit and the export or withdrawal of currency from the United States or any place subject to the jurisdiction thereof by any person within the United States or any place subject to the jurisdiction thereof.

SECTION 2. *Definitions.*—As used in this Order the term "person" means an individual, partnership, association, or corporation; and the term "the United States" means the United States and any place subject to the jurisdiction thereof.

SECTION 3. *Returns.*—Within fifteen days from the date of this Order every person in possession of and every person owning gold coin, gold bullion, or gold certificates shall make under oath and file as hereinafter provided a return to the Secretary of the Treasury containing true and complete information relative thereto, including the name and address of the person making the return; the kind and amount of such coin, bullion, or certificates held, and the location thereof; if held for another, the capacity in which held and the person for whom held, together with the post office address of such person; and the nature of the transaction requiring the holding of such coin, bullion, or certificates, and a statement explaining why such transaction cannot be carried out by the use of currency other than gold certificates; provided that no returns are required to be filed with respect to—

(*a*) Gold coin, gold bullion, and gold certificates in an amount not exceeding in the aggregate $100 belonging to any one person;

(*b*) Gold coin having a recognized special value to collectors of rare and unusual coin;

(*c*) Gold coin, gold bullion, and gold certificates acquired or held under a license heretofore granted by or under authority of the Secretary of the Treasury; and

(*d*) Gold coin, gold bullion, and gold certificates owned by Federal reserve banks.

Such return required to be made by an individual shall be filed with the Collector of Internal Revenue for the collection district in which such individual resides, or, if such individual has no legal residence in the United States, then with the Collector of Internal Revenue at Baltimore, Maryland. Such return required to be made by a partnership, association, or corporation shall be filed with the Collector of Internal Revenue of the collection district in which is located the principal place of business or principal office or agency of such partnership, association, or corporation, or if it has no principal place of business or principal office or agency in the United States, then with the Collector of Internal Revenue at Baltimore, Maryland. Such return required to be made by an individual residing in Alaska shall be filed with the Collector of Internal Revenue at Seattle, Washington. Such return required to be made by a partnership, association, or corporation having its principal place of business or principal office or agency in Alaska shall be filed with the Collector of Internal Revenue at Seattle, Washington.

The Secretary of the Treasury may grant a reasonable extension of time for filing a return, under such rules and regulations as he shall prescribe. No such extension shall be for more than forty-five

days from the date of this Executive Order. An extension granted hereunder shall be deemed a license to hold for a period ending fifteen days after the expiration of the extension.

The returns required to be made and filed under this Section shall constitute public records; but they shall be open to public inspection only upon order of the President and under rules and regulations prescribed by the Secretary of the Treasury.

A return made and filed in accordance with this Section by the owner of the gold coin, gold bullion, and gold certificates described therein, or his duly authorized agent, shall be deemed an application for the issuance under Section 5 hereof of a license to hold such coin, bullion, and certificates.

SECTION 4. *Acquisition of gold coin and gold bullion.*—No person other than a Federal reserve bank shall after the date of this Order acquire in the United States any gold coin, gold bullion, or gold certificates except under license therefor issued pursuant to this Executive Order, provided that member banks of the Federal Reserve System may accept delivery of such coin, bullion, and certificates for surrender promptly to a Federal reserve bank, and provided further that persons requiring gold for use in the industry, profession, or art in which they are regularly engaged may replenish their stocks of gold up to an aggregate amount of $100, by acquisitions of gold bullion held under licenses issued under Section 5 (b), without necessity of obtaining a license for such acquisitions.

The Secretary of the Treasury, subject to such further regulations as he may prescribe, shall issue licenses authorizing the acquisition of

(*a*) Gold coin or gold bullion which the Secretary is satisfied is required for a necessary and lawful transaction for which currency other than gold certificates cannot be used, by an applicant who establishes that since March 9, 1933, he has surrendered an equal amount of gold coin, gold bullion, or gold certificates to a banking institution in the continental United States or to the Treasurer of the United States;

(*b*) Gold coin or gold bullion which the Secretary is satisfied is required by an applicant who holds a license to export such an amount of gold coin or gold bullion issued under subdivisions (*c*) or (*d*) of Section 6 hereof, and

(*c*) Gold bullion which the Secretary or such agency as he may designate is satisfied is required for legitimate and customary use in industry, profession, or art by an applicant regularly engaged in such industry, profession, or art, or in the business of furnishing gold therefor.

Licenses issued pursuant to this Section shall authorize the holder to acquire gold coin and gold bullion only from the sources specified by the Secretary of the Treasury in regulations issued hereunder.

SECTION 5. *Holding of gold coin, gold bullion, and gold certificates.*—After thirty days from the date of this Order no person shall hold in his possession or retain any interest, legal or equitable, in any gold coin, gold bullion, or gold certificates situated in the United States and owned by any person subject to the jurisdiction of the United

States, except under license therefor issued pursuant to this Executive Order; provided, however, that licenses shall not be required in order to hold in possession or retain an interest in gold coin, gold bullion, or gold certificates with respect to which a return need not be filed under Section 3 hereof.

The Secretary of the Treasury, subject to such further regulations as he may prescribe, shall issue licenses authorizing the holding of

(*a*) Gold coin, gold bullion, and gold certificates, which the Secretary is satisfied are required by the person owning the same for necessary and lawful transactions for which currency, other than gold certificates, cannot be used;

(*b*) Gold bullion which the Secretary, or such agency as he may designate, is satisfied is required for legitimate and customary use in industry, profession, or art by a person regularly engaged in such industry, profession, or art or in the business of furnishing gold therefor;

(*c*) Gold coin and gold bullion earmarked or held in trust since before April 20, 1933, for a recognized foreign government or foreign central bank or the Bank for International Settlements; and

(*d*) Gold coin and gold bullion imported for reexport or held pending action upon application for export licenses.

SECTION 6. *Earmarking and export of gold coin and gold bullion.*—After the date of this Order no person shall earmark or export any gold coin, gold bullion, or gold certificates from the United States, except under license therefor issued by the Secretary of the Treasury pursuant to the provisions of this Order.

The Secretary of the Treasury, in his discretion and subject to such regulations as he may prescribe, may issue licenses authorizing—

(*a*) The export of gold coin or gold bullion earmarked or held in trust since before April 20, 1933, for a recognized foreign government, foreign central bank, or the Bank for International Settlements;

(*b*) The export of gold, (i) imported for reexport, (ii) refined from gold-bearing materials imported by the applicant under an agreement to export gold, or (iii) in bullion containing not more than five ounces of gold per ton;

(*c*) The export of gold coin or gold bullion to the extent actually required for the fulfillment of a contract entered into by the applicant prior to April 20, 1933; but not in excess of the amount of the gold coin, gold bullion, and gold certificates surrendered by the applicant on or after March 9, 1933, to a banking institution in the continental United States or to the Treasurer of the United States; and

(*d*) The earmarking for foreign account and/or export of gold coin or gold bullion, with the approval of the President, for transactions which the Secretary of the Treasury may deem necessary to promote the public interest.

SECTION 7. *United States Possessions—Shipments Thereto.*—The provisions of Sections 3 and 5 of this Order shall not apply to gold coin, gold bullion, or gold certificates which are situated in the Philippine Islands, American Samoa, Guam, Hawaii, Panama Canal Zone, Puerto Rico, or the Virgin Islands of the United States, and are owned by a person not domiciled in the continental United

States. The provisions of Section 4 shall not apply to acquisitions by persons within the Philippine Islands, American Samoa, Guam, Hawaii, Panama Canal Zone, Puerto Rico, or the Virgin Islands of the United States of gold coin or gold bullion which has not been taken or sent thereto since April 5, 1933, from the continental United States or any place subject to the jurisdiction thereof.

SECTION 8. Until further order, the Secretary of the Treasury is authorized, through any agency that he may designate, to investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange, transfers of credit from any banking institution within the United States to any foreign branch or office of such banking institution or to any foreign bank or banker, and the export or withdrawal of currency from the United States, by any person within the United States; and the Secretary of the Treasury may require any person engaged in any transaction referred to herein to furnish under oath complete information relative thereto, including the production of any books of account, contracts, letters, or other papers, in connection therewith in the custody or control of such person either before or after such transaction is completed.

SECTION 9. The Secretary of the Treasury is hereby authorized and empowered to issue such regulations as he may deem necessary to carry out the purposes of this Order. Such regulations may provide for the detention in the United States of any gold coin, gold bullion, or gold certificates sought to be transported beyond the limits of the

continental United States, pending an investigation to determine if such coin, bullion, or certificates are held or are to be acquired in violation of the provisions of this Executive Order. Licenses and permits granted in accordance with the provisions of this Order and the regulations prescribed hereunder, may be issued through such officers or agencies as the Secretary may designate.

SECTION 10. Whoever willfully violates any provision of this Executive Order or of any license, order, rule, or regulation issued or prescribed hereunder, shall, upon conviction, be fined not more than $10,000, or, if a natural person, may be imprisoned for not more than 10 years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.

SECTION 11. The Executive Orders of April 5, 1933, Forbidding the Hoarding of Gold Coin, Gold Bullion and Gold Certificates, and April 20, 1933, relating to Foreign Exchange and the Earmarking and Export of Gold Coin or Bullion or Currency, respectively, are hereby revoked. The revocation of such prior Executive Orders shall not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil or criminal cause prior to said revocation, but all liabilities under said Executive Orders shall continue and may be enforced in the same manner as if said revocation had not been made. This Executive Order and any regulations or licenses issued hereunder may be modified or revoked at any time.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE,
August 28, 1933.

EXECUTIVE ORDER No. 6261, AUGUST 29, 1933

[RELATING TO THE SALE AND EXPORT OF GOLD RECOVERED FROM NATURAL DEPOSITS]

By virtue of the authority vested in me by Section 5(*b*) of the Act of October 6, 1917, as amended by Section 2 of the Act of March 9, 1933, entitled "An Act to Provide Relief in the Existing National Emergency in Banking and for other Purposes", I, FRANKLIN D. ROOSEVELT, PRESIDENT OF THE UNITED STATES OF AMERICA, do declare that a period of national emergency exists, and by virtue of said authority and of all other authority vested in me, do hereby issue the following executive order:

The Secretary of the Treasury is hereby authorized to receive on consignment for sale, subject to such rules and regulations and upon such conditions as he shall prescribe, gold recovered from natural deposits in the United States or any place subject to the jurisdiction thereof. Sales may be made:

(*a*) To persons licensed to acquire gold for use in the arts, industries or professions, or
(*b*) By export to foreign purchasers.

Such sales shall be made at a price which the Secretary shall determine to be equal to the best price obtainable in the free gold markets of the world after taking into consideration any incidental expenses such as shipping costs and insurance.

Such sales may be made through the Federal Reserve banks or such other agents as the Secretary may from time to time designate, and shall be subject to such charges as the Secretary may from time to time in his judgment determine.

Every person depositing gold for sale as provided herein shall be deemed to have agreed to accept as conclusive without any right or recourse or review, the determination of the Secretary or his duly authorized agent as to the amount due such person as a result of any sale.

Consignments shall be sold as nearly as may be in the order of their receipt.

The Secretary of the Treasury, in his discretion and subject to such regulations as he may prescribe, is hereby authorized to issue licenses permitting the export of articles fabricated from gold sold pursuant to this executive order.

This executive order may be modified or revoked at any time.

FRANKLIN D. ROOSEVELT.

The WHITE HOUSE,
August 29, 1933

REGULATIONS OF SECRETARY OF THE TREASURY, SEPTEMBER 12, 1933

GENERAL PROVISIONS

ARTICLE 1. *Scope.*—These Regulations shall be operative throughout the United States and every place subject to the jurisdiction thereof, unless otherwise indicated.

ARTICLE 2. *Authority for regulations and licenses.*—These Regulations are issued under the authority of Section 5 (b) of the Act of October 6, 1917, as amended by Section 2 of the Act of March 9, 1933, and the Executive Orders of the President dated August 28, 1933, and August 29, 1933.

Licenses authorized under the provisions of the Executive Orders of August 28, 1933, and August 29, 1933, may be issued in accordance with these Regulations by the Secretary of the Treasury or by such officers or agencies as the Secretary of the Treasury may designate.

ARTICLE 3. *Definitions.*—The terms *"person"* and *"the United States"* are given the same meaning in these Regulations as in the Executive Order of August 28, 1933.

The term *"the continental United States"* means the States of the United States, the District of Columbia, and the Territory of Alaska.

References to *"Sections"* are to the designated sections of the Executive Order of August 28, 1933, Relating to the Hoarding, Export, and Earmarking of Gold Coin, Bullion, or Currency and to Transactions in Foreign Exchange.

References to *"Articles"* are to the numbered Articles of these Regulations.

The term *"Mint"* will be used to include any person in charge of a United States Mint or Assay Office.

Whenever reference is made to amounts of gold coin or gold bullion herein or in any license granted under the Executive Orders of August 28, 1933, and August 29, 1933, in terms of dollars, each dollar of such amount equals twenty-five and eight-tenths grains of gold nine-tenths fine. (See R. S., sec. 3511; March 14, 1900, c. 41, sec. 1, 31 stat. 45.)

ARTICLE 4. *General provisions affecting applications.*—Every application for a license to acquire, hold, earmark, and/or export gold coin, gold bullion or gold certificates shall be made upon the

appropriate application form prescribed by the Secretary of the Treasury and shall be executed under oath before an officer authorized to administer oaths. Consideration of any application may be withheld pending the furnishing of any or all of the information required in such forms or of such additional information as may be deemed necessary by the Secretary of the Treasury, or the agency through which the license is to be issued. There shall be attached to the application such instruments as may be specified therein or required by the Secretary of the Treasury, or by such agency. Whenever additional information is requested it shall be furnished under oath.

ARTICLE 5. *General provisions affecting licenses.*—Licenses issued pursuant to the Executive Orders or these Regulations shall be upon the appropriate form prescribed by the Secretary of the Treasury. They shall be nontransferable and shall entitle the licensee to hold, acquire, earmark, and/or export gold coin, gold bullion, or gold certificates only in accordance with the conditions and limitations specified therein.

Licenses may be modified or revoked at any time in the discretion of the Secretary of the Treasury. In the event that a license is modified or revoked, the Secretary of the Treasury, or the designated agency through which the license was issued, shall advise the licensee by letter mailed to the address of the licensee set forth in the application. The licensee, upon receipt of such advice, shall forthwith surrender his license to the Secretary of the Treasury or the agency through which the license was issued. If the license has been modified but not revoked, the Secretary of the Treasury,

or the agency through which the original license was issued, shall thereupon issue a modified license. A person holding gold coin, gold bullion, or gold certificates under a license that has been revoked, shall not hold such gold coin, gold bullion, or gold certificates for more than fifteen days after the delivery of the notice of revocation, and a person holding gold coin, gold bullion, or gold certificates under a license which has been modified, shall not hold such gold coin, gold bullion, or gold certificates for more than fifteen days after the delivery of the notice of modification except as permitted under the modified license.

RETURNS

ARTICLE 6. *Persons required to file returns* (Section 3).—Except as provided in Section 3 (a), (b), (c), and (d), returns must be filed with respect to all gold coin, gold bullion, and gold certificates situated within the continental United States by all persons in actual or constructive possession thereof, and, in addition, by all persons owning such coin, bullion, and certificates unless such persons are not subject to laws effective within the limits of the United States. Gold acquired as scrap gold or sweepings is not to be considered as gold acquired under license within the meaning of Section 3 (c) and must be included in the return. The returns made and filed by the owners of the coin, bullion, or certificates described in the returns, or by their duly authorized agents, shall be deemed to be applications for the issuance of a license under Section 5 to hold such coin, bullion, and certificates.

ARTICLE 7. *Form of returns* (Section 3).—Returns shall be made upon Form TG-1. Such

returns shall contain true and complete information relative to all gold coin, gold bullion, and gold certificates owned by, and/or in the possession of the person making the return, or on whose behalf the return is made and filed, and shall include all the information required in the form of return.

ARTICLE 8. *Filing of returns* (Section 3).—Returns shall be executed and filed in triplicate with the Collector of Internal Revenue as provided in Section 3. A return shall be deemed to have been filed when it is received by the proper Collector of Internal Revenue or when it is properly addressed and mailed and bears a postmark dated prior to midnight of September 18, 1933. At the close of each business day the Collectors of Internal Revenue shall forward one executed copy of every return filed on that day to the Secretary of the Treasury and another executed copy to the Federal Reserve bank of the Federal Reserve district which embraces the city in which the Collector of Internal Revenue has his office. As promptly as possible each Federal Reserve bank shall forward to the Secretary of the Treasury its recommendations as to whether the application for a license to hold the gold coin, or gold bullion, or gold certificates described in the return should be granted or denied, in whole or in part.

ARTICLE 9. *Extensions of time for filing returns* (Section 3).—Upon a verified written request made to the Secretary of the Treasury by a person possessing or owning gold coin, gold bullion, or gold certificates, setting forth reasons why the return cannot be made or filed on or before September 18, 1933, the Secretary of the Treasury, in his discretion,

may grant such an extension of time for making the return as under the circumstances shall appear to be required, provided, however, that any extension so granted shall not be for a period ending after October 12, 1933.

ARTICLE 10. *Publication of returns* (Section 3).—Returns filed under Section 3 shall constitute public records, but they shall be open to public inspection only upon order of the President and under rules and regulations which may be prescribed by the Secretary of the Treasury.

ACQUISITION

ARTICLE 11. *Acquisition of gold without license* (Sections 4 and 7).—Any person regularly engaged in an industry, profession, or art for which gold is required may hold, without a license, a stock of gold bullion which, together with all other gold coin, gold bullion, and gold certificates held by such person, does not exceed, in the aggregate, $100. Such person may replenish his stock of gold as it is used in the industry, profession, or art in which he is engaged, by acquisitions of gold bullion from persons holding licenses to hold gold bullion issued in accordance with Section 5 (b) without obtaining a license for such acquisitions, provided the aggregate amount of gold coin, gold bullion, and gold certificates owned by him after making such acquisitions does not exceed $100. Federal Reserve banks may acquire gold coin, gold bullion, and gold certificates without the necessity of obtaining a license for such acquisitions and member banks of the Federal Reserve system may acquire such coin, bul-

lion, and certificates for surrender promptly to a Federal Reserve bank.[3]

A person in the Philippine Islands, American Samoa, Guam, Hawaii, Panama Canal Zone, Puerto Rico, or the Virgin Islands of the United States may acquire gold coin or gold bullion situated therein, without obtaining a license under Section 4 of the Executive Order of August 28, 1933, excepting gold coin or gold bullion shipped or taken to any such place from a place in the continental United States or any place subject to the jurisdiction thereof, after April 5, 1933, in which case a license to acquire such gold coin or gold bullion is necessary.

ARTICLE 12. *Acquisition of gold for necessary and lawful transactions* (Section 4 (a)).—

(1) *Applications.*—Every application for a license under Section 4 (a) to acquire gold coin or gold bullion required for a necessary and lawful transaction for which currency other than gold

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[3] The Executive Order of March 10, 1933 (No. 6073), provides in part as follows:

"No permission to any banking institution to perform any banking functions shall authorize such institutions to pay out any gold coin, gold bullion, or gold certificates except as authorized by the Secretary of the Treasury, nor to allow withdrawal of any currency for hoarding, nor to engage in any transaction in foreign exchange except such as may be undertaken for legitimate and normal business requirements, for reasonable traveling and other personal requirements, and for the fulfillment of contracts entered into prior to March 6, 1933."

Under this provision Federal Reserve banks are prohibited from paying out any gold coin, gold bullion, or gold certificates except as authorized by the Secretary of the Treasury.

certificates cannot be used (not including acquisitions for industry, profession, or art for which see Article 14), shall be made on Form TG–2 and shall be filed in duplicate with the Federal Reserve bank of the district in which the applicant has surrendered gold coin, gold bullion, or gold certificates since March 9, 1933.

(2) *Disposition of applications* (Section 4 (a)).—The Federal Reserve bank receiving the application shall make such investigation of the case as it may deem necessary and shall transmit to the Secretary of the Treasury the original of the application together with (i) any supplemental information it may deem appropriate, and (ii) its recommendation whether a license should be granted or denied, in whole or in part. The Federal Reserve bank shall retain the duplicate of the application for its records.

(3) *Licenses* (Section 4 (a)).—Upon receipt of the application for a license and the recommendation of the Federal Reserve bank transmitting the application, the Secretary of the Treasury will grant or deny the license. A license on Form TGL–2 will be granted to an applicant who has filed an application in accordance with paragraph 1 of this Article for the acquisition of gold coin or gold bullion which the Secretary of the Treasury is satisfied is required for a necessary and lawful transaction for which currency other than gold certificates cannot be used, providing the applicant shall have established that he has surrendered an equal amount of gold coin, gold bullion, or gold certificates to a banking institution in the continental United States, to the Treasurer of the United States,

or to a Mint, since March 9, 1933. A license shall not be granted for an amount of gold coin or bullion exceeding the amount of gold coin, bullion, or certificates so surrendered or for any coin, bullion, or certificates with respect to which acquisitions have been made previously under license granted by the Secretary of the Treasury. When the issuance of a license shall have been approved by the Secretary of the Treasury, a license will be issued to the applicant through the Federal Reserve bank which received and transmitted the application. Such license shall authorize the applicant to hold the gold to be acquired thereunder for the period specified therein unless it is sooner used for the transaction with respect to which the license was granted. If a license is denied, the Federal Reserve bank will be so advised and shall immediately notify the applicant. The decision of the Secretary of the Treasury with respect to granting or denying a license is final. The Federal Reserve bank shall make a notation upon the duplicate of the application whether a license has been granted, and, if granted, the date of the license and the amount of the gold coin or gold bullion specified therein.

(4) *Delivery of gold coin or gold bullion* (Section 4 (a)).—Upon presentation and surrender of a license issued pursuant to Section 4 (a) to the Federal Reserve bank at which the application was received, such bank is authorized to deliver the amount of gold coin or gold bullion specified in such license to the licensee upon payment therefor of an equivalent amount of any form of coin or currency coined or issued by the United States.

(5) *Reports of disposition* (Section 4 (a)).—Immediately upon the disposition of gold coin or gold bullion acquired under a license issued pursuant to Section 4 (a), the licensee shall file a report in duplicate with the Federal Reserve bank through which the license was issued. Such report shall be on Form TGR–2 and shall be executed under oath before an officer authorized to administer oaths. Upon receipt of such report, the Federal Reserve bank shall immediately transmit the original thereof to the Secretary of the Treasury and retain the duplicate for its records.

ARTICLE 13. (1) *Acquisition for export* (Section 4 (b)).—An application for a license to acquire gold coin or gold bullion for export under a license issued pursuant to Section 6 (c) or (d) shall be made in duplicate on Form TG–3 and shall be filed with a Federal Reserve bank. The Federal Reserve bank, after making such investigation of the case as it may deem necessary, shall transmit the original of the application to the Secretary of the Treasury, together with such supplemental information as it may deem appropriate, and its recommendation as to whether the license should be granted or denied. The Federal Reserve bank shall retain the duplicate of the application for its records.

(2) *Licenses* (Section 4 (b)).—If the Secretary of the Treasury, in his discretion, determines to grant a license to the applicant under this Article, the Federal Reserve bank through which the application was transmitted will be authorized to issue a license on his behalf to such applicant to acquire gold coin or gold bullion for export under a license

issued pursuant to Section 6 (c) or (d). Such license shall be on Form TGL–3.

(3) *Delivery of gold coin or gold bullion* (Section 4 (b)).—Upon presentation and surrender to the Federal Reserve bank at which the application was filed, of a license issued pursuant to Section 4 (b), such bank is authorized to deliver to the licensee the amount of gold coin or gold bullion specified in such license upon payment therefor of an equivalent amount of any form of coin or currency coined or issued by the United States.

(4) *Report of disposition* (Section 4 (b)).—Immediately upon the disposition of gold coin or gold bullion acquired under a license issued pursuant to Section 4 (b), the licensee shall file a report in duplicate with the Federal Reserve bank through which the license was issued. Such report shall be made on Form TGR–3 and shall be executed under oath before an officer authorized to administer oaths. Upon the receipt of such report, the Federal Reserve bank shall immediately transmit the original thereof to the Secretary of the Treasury and shall retain the duplicate for its records.

ARTICLE 14. *Acquisition of gold for use in industry, profession, or art* (Section 4 (c)).—

(1) *Applications* (Section 4 (c)).—Any person having a legitimate and customary use for gold in industry, profession, or art, or any dealer customarily supplying gold for such use, may file with a Mint an application for a license under Section 4 (c) to acquire from time to time, and thereafter to hold in stock, such quantity of gold as may be required for this use. Such application shall be made on Form TG–4 and filed with a Mint.

(2) *Licenses* (Section 4 (c)).—Upon receipt of the application and after making such investigation of the case as it may deem advisable, the Mint, if satisfied that the gold is necessary for the legitimate and customary requirements of the applicant's industry, profession, art, or business, shall issue to the applicant on behalf of the Secretary of the Treasury a license on Form TGL–4 to acquire from time to time, and hold in stock, such quantity of gold (not in excess of the amount applied for) as in the opinion of the Mint may be necessary for the applicant's requirements.

Every holder of a license issued pursuant to this Article shall be entitled to hold an amount of gold not exceeding at any one time the amount of gold stated in the license, so long as he remains engaged in the industry, profession, art, or business stated in the application. As the licensee's stock of gold shall become depleted by its use in the industry, profession, or art in which he is engaged, or the industry, profession, or art which is supplied by the licensee as a dealer, the licensee shall be entitled to replenish his stock of gold by acquisitions in accordance with the provisions of his license, without being required to file further applications.

(3) *Records* (Sections 4 (c) and 5 (b)).—Every person holding a license issued pursuant to Sections 4 (c) or 5 (b) shall keep an exact record of all acquisitions and deliveries of fine gold, gold contained in alloyed golds in any form for further manufacture, and gold derived from (i) refined bars, ingots, plates, and the like, (ii) refinings, and (iii) dental scrap, broken-up jewelery, watch cases, optical frames, and the like, which have not been

melted. Such record shall contain the name, address, and license number of each person from whom he acquires and to whom he delivers such gold, and shall be available for examination by a representative of the Treasury Department for at least one year after the date of the disposition of such gold.

(4) *Reports* (Sections 4 (c) and 5 (b)).—A report shall be made by every person holding a license issued pursuant to Sections 4 (c) or 5 (b) for each month in which such person acquires, holds, or disposes of fine gold, gold contained in alloyed golds in any form for further manufacture, and gold derived from (i) unrefined bars, ingots, plates, and the like, (ii) refinings, and (iii) dental scrap, broken-up jewelery, watch cases, optical frames, and the like, which have not been melted. Such report shall be made on Form TGR–4, shall be executed under oath before an officer authorized to administer oaths, and shall be filed with the Secretary of the Treasury on or before the 15th day of each month. Such report shall cover the period of the calendar month preceding the month in which the report is filed.

ARTICLE 15. *Persons from whom acquisitions may be made* (Section 4 (c)).—A license to acquire and hold gold for legitimate and customary use in industry, profession, or art, issued under Section 4 (c) of the Executive Order shall authorize the licensee to acquire only (1) gold bullion recovered from natural deposits in the United States or any place subject to the jurisdiction thereof and sold under consignment in accordance with Articles 29 to 35, inclusive, (2) gold held under license to ac-

quire or hold in stock for use in industry, profession, or art, or (3) dental scrap, broken-up jewelry, watch cases, optical frames, and the like, which have not been melted.

HOLDING

ARTICLE 16. *Returns considered as applications to hold* (Sections 3 and 5).—A return made on Form TG–1 and filed in accordance with Section 3 by the owner of gold coin, gold bullion, or gold certificates described therein, or his duly authorized agent, shall be deemed an application for the issuance under Section 5 of a license to hold such coin, bullion, and certificates. Further application is not required to be made or filed with respect to such gold. The Secretary of the Treasury may, however, withhold action upon any such return pending receipt from the applicant, or the determination by further investigation, of such additional information as the Secretary deems necessary to establish the gold coin, gold bullion, or gold certificates described in the return are required by the person owning the same for the purpose specified in Section 5 (a) or (b), or that the application comes within the provisions of Section 5 (c) or (d).

ARTICLE 17. *Licenses to hold* (Sections 3 and 5).—A license on Form TGL–1 to hold gold coin, gold bullion, or g ld certificates will entitle the holder to hold such coin, bullion, or certificates stated in the license during the period of time, and for the purpose or purposes, specified in the license. The license will be mailed to the person who executed the return at the address given in the return. If a license is denied, the Secretary of the Treas-

ury will advise the person who executed the return by telegraph or by letter mailed to the address given in the return. Failure to receive advice that a license has been denied shall not be construed as evidence that the license has been granted.

ARTICLE 18. (1) *Reports of disposition of gold held* (Sections 3 and 5).—Any person holding gold coin, gold bullion, or gold certificates under a license issued pursuant to Article 17 who shall at any time dispose of such gold coin, gold bullion, or gold certificates in accordance with the terms of the license (or otherwise) shall immediately file a report in duplicate on the appropriate form designated in the license with the Secretary of the Treasury. Such report shall be executed under oath before an officer authorized to administer oaths.

ARTICLE 19. *United States possessions* (Section 7).—A person not domiciled in the continental United States who owns gold coin, gold bullion, or gold certificates situated in the Philippine Islands, American Samoa, Guam, Hawaii, Panama Canal Zone, Puerto Rico, or the Virgin Islands of the United States is not required to obtain a license from the Secretary of the Treasury to hold such gold coin, gold bullion, or gold certificates.

EARMARKING AND EXPORT

ARTICLE 20. *Earmarking or export of gold coin or bullion* (Sections 4 (b) and 6 (a), (c), and (d)).—

(1) *Applications.*—An application for a license to export under Section 6 (*a*) or (*c*) or to earmark for foreign account or export under Section [illegible] shall be made on Form TG–3 and shall be filed with

a Federal Reserve bank. The application shall also constitute an application for a license to acquire gold for purposes of Section 6 (*c*) and (*d*) as provided in Article 13. The bank, after making such investigation of the case as it may deem necessary, shall transmit the original of the application to the Secretary of the Treasury, together with (*a*) such supplemental information as it may deem appropriate and (*b*) its recommendation as to whether the license should be granted or denied. The duplicate of the application shall be retained by the Federal Reserve bank for its records.

(2) *Licenses* (Sections 4 (b) and 6 (a), (c), and (d)).—If the Secretary of the Treasury in his discretion determines to grant a license upon an application filed under this Article, he will advise the Federal Reserve bank through which the application was transmitted to issue, on his behalf, a license to export a specified amount of gold coin or gold bullion, and to acquire and hold for such export a specified amount of gold coin or gold bullion, and the Federal Reserve bank shall thereupon issue on behalf of the Secretary of the Treasury such license to the applicant on Form TGL–3. If the license is not granted, the Federal Reserve bank through which the application was transmitted will be advised and shall thereupon so notify the applicant.

ARTICLE 21. *Import for smelting and/or refining and export* (Section 6 (b) (ii)).—

(1) *Notation upon entry* (Section 6 (b) (ii)).—Upon the formal entry into the United States of gold-bearing ores, or any other gold-bearing materials imported into the United States for smelting and/or refining under an agreement providing for

the export of gold bullion, the importer shall notify the Collector of Customs at the port where the gold-bearing ore or material is formally entered that the importation is made under such agreement. The Collector shall make a notation on the entry to this effect and forward a copy of the entry to the United States Assay Office at New York, New York, or to the United States Mint at San Francisco, California, whichever is designated by the importer.

(2) *Sampling and assaying* (Section 6 (b) (ii)).—Promptly upon the receipt of each importation of gold-bearing ore or material at the plant where it is first to be treated, it shall be weighed, sampled and assayed for gold content. A reserve commercial sample shall be retained at such plant for at least one year from the date the importation was received by the plant unless the assay is sooner verified by the Treasury Department.

(3) *Plant records* (Section 6 (b) (ii)).—The importer shall cause an exact record, covering each importation, to be kept at the plant of first treatment. The record shall show the gross wet weight of the importation, the weight of containers, if any, the net wet weight, the percentage and weight of moisture, the net dry weight, the gold content shown by the settlement assay, and the amount of gold bullion required to be exported under the agreement. An attested copy of such record shall be filed promptly with the Assay Office or the Mint, which has been designated to receive a copy of the entry.

(4) *Application for export license* (Section 6 (b) (ii)).—Not later than sixty days from the date of entry, the importer shall file an application on Form TG–5 with the Assay Office or the Mint,

which has been designated to receive a copy of the entry, for a license to export gold bullion not in excess of the amount shown by the settlement sheet covering the importation. The application shall be accompanied by two duly attested copies of the settlement sheet.

(5) *Issuance of serial numbered certificates* (Section 6 (b) (ii)).—If the Mint is satisfied as to the accuracy of the data shown on such application, it shall issue to the importer a dated serial numbered certificate which shall show the amount of gold specified by the application and the amount specified by the settlement sheet. The Director of the Mint shall prescribe the form of such certificate.

(6) *Licenses* (Section 6 (b) (ii)).—Upon delivery to the Mint, within 120 days from the date it was issued, of the serial numbered certificate the Mint shall issue to the applicant on behalf of the Secretary of the Treasury a license on Form TGL–5 to export gold bullion in an amount not exceeding the amount specified in the settlement sheet as shown on such certificate.

(7) *Exportation prior to receipt of settlement sheets* (Section 6 (b) (ii)).—Upon a showing in the application that an exportation with respect to any gold-bearing ores or materials imported into the United States for smelting and/or refining under an agreement providing for the export of gold bullion is necessary prior to the time when the settlement sheet can be procured, the Mint may receive the application with duplicate certified copies of the report of the applicant's actual test assay. If prior reports of such applicant have been substantiated approximately by the settlement sheets, the Mint may grant a license to export up to 90% of

the amount of gold which such report estimates will be realized from such gold-bearing ores or materials.

ARTICLE 22. *Gold imported for reexport* (Section 6 (b)(i)).—The provisions of Article 20 insofar as applicable shall be complied with by every person desiring a license to export gold imported for reexport. A license is not required for the export of gold shipments from abroad invoiced for continuous transshipment and reexport from a designated point, if such shipments remain under Customs' custody throughout the period of transit within the United States.

ARTICLE 23. *Gold contained in other metals* (Section 6 (b) (iii)).—

(1) *Applications.*—Applications for licenses under Section 6 (b) (iii) for the export of gold in metals containing not more than five troy ounces of gold per short ton of such metals shall be made on Form TG–6 and filed with a Mint. A commercial sample of the metal shall accompany the application whenever required by the Mint.

(2) *Licenses* (Section 6 (b)(iii)).—If the Mint is satisfied as to the accuracy of the data shown on such application and is satisfied that the exportation is made in the course of the applicant's regular business of supplying the metal other than the gold contained therein, he may issue to the applicant a license on Form TGL–6 to export the metal described in the application in an amount not in excess of the amount for which application has been made.

ARTICLE 24. *Notice to Collectors of Customs of license to export* (Section 6).—At the time any li-

cense to export gold coin or gold bullion (including metals containing gold) is issued, the issuing Federal Reserve bank or Mint shall transmit a copy thereof to the Collector of Customs at the port of export designated in the license. Collectors of Customs shall not permit the export of any gold coin or gold bullion (including metals containing gold) except upon surrender of a license to export, a copy of which has been received by him from the Federal Reserve bank or the Mint issuing such license. The Collector of Customs to whom a license to export is surrendered shall cancel such license and return it to the Federal Reserve bank or Mint which issued the same. In the event that the shipment is to be made by mail, a copy of the export license shall be sent to the Postmaster of the post office designated in the application, who will act under the instructions of the Postmaster General in regard thereto.

ARTICLE 25. *Expiration of export licenses* (Section 6).—All licenses to export gold coin or gold bullion shall expire 15 days after the date of issue, and no person shall hold such gold coin or gold bullion in the United States after the expiration of his license to export, unless otherwise licensed to hold the gold coin or gold bullion described in the license to export.

ARTICLE 26. *Investigation in connection with shipments of gold coin, gold bullion, or gold certificates* (Section 9).—Each Collector of Customs or Postmaster may cause an investigation to be made to determine if any of the gold coin, gold bullion, or gold certificates presented to him in the course of, or for, transportation beyond the limits of the con-

tinental United States are held or are to be acquired in violation of the provisions of the Executive Orders. Such gold coin, gold bullion, or gold certificates may be detained pending such investigation and pending receipt of instructions from the Commissioner of Customs or the Postmaster General, or the persons designated by them for that purpose.

In the event that any gold is presented to a Collector of Customs or Postmaster in the course of, or for, transportation to any foreign country, and the export is not covered by a proper license to export, the Collector of Customs shall refuse to permit the gold to pass and the Postmaster shall refuse to accept the gold for mailing, until the person carrying, shipping, or mailing the gold has filed an affidavit containing information required by the Commissioner of Customs or Postmaster General, respectively, with respect to each article containing gold and until advice is received from the Commissioner of Customs or the Postmaster General, or the persons designated by them that such shipment is not in violation of the Executive Orders.

ARTICLE 27. *Penalties* (Section 10).—Whoever willfully violates any provision of these Regulations or of any license, order, rule, or regulation issued or prescribed hereunder, shall, upon conviction, be fined not more than $10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both. The making and filing of any return, application, report, or record for the ac-

quisition, earmarking, export, holding or disposition of gold coin, gold bullion, or gold certificates, which contains false information is a violation of the Executive Orders of August 28, 1933, and August 29, 1933, and of these Regulations. The disposition of gold held under a license for purposes other than those stated in the application for such license or in the license shall constitute a violation of the Executive Orders and of these Regulations.

ARTICLE 28. *Regulations of April 29, 1933, revoked* (Section 11).—The Regulations issued April 29, 1933, under the Executive Orders of April 5 and April 20, 1933, are revoked. The revocation of such Regulations shall not affect any act done or any right accruing or accrued or any suit had or commenced in any civil or criminal cause prior to said revocation, but all liabilities under said Regulations shall continue and may be enforced as if said revocation had not been made.

A license issued pursuant to the Regulations issued April 29, 1933, to acquire, withhold, earmark, or export gold coin, gold bullion, and gold certificates shall not be deemed to have been modified or revoked by reason of the revocation of such Regulations.

ARTICLE 29. *Gold received on consignment for sale.*—The Secretary of the Treasury under the conditions specified in this and the following Articles of these Regulations, and subject to the appropriate regulations governing the Mints and Assay Offices, will receive at any United States Mint or Assay Office on consignment for sale under the provisions of the Executive Order of August 29, 1933, gold recovered from natural deposits in

the United States or any place subject to the jurisdiction thereof, unless such gold was held prior to August 28, 1933, in noncompliance with the terms of the Executive Order of April 5, 1933, and/or the Regulations issued thereunder, or was held after August 28, 1933, in noncompliance with the Executive Order of August 28, 1933, and/or the Regulations issued thereunder. Gold which was at any time prior to August 28, 1933, in the possession of or owned in whole or in part by a bank (except gold in its natural state purchased by a bank directly from miners and which gold has not been held by such bank in noncompliance with the Executive Orders of April 5 and August 28, 1933), Mint or Assay Office in the form of coin or bullion, will not be received on consignment for sale.

Gold will be received in amounts of not less than two ounces of fine gold and in the following forms: Bars, kings, buttons, retort sponge, lumps, grains, and dust in their native state free from earth and stone, or nearly so. Consignments shall not contain less than 200 parts of gold in 1,000 by assay. In the case of gold forwarded to a Mint by mail or express, the original package will not be opened until an invoice of the description and weight of each such package shall have been received. When there is a material discrepancy between the actual and invoice weights of a consignment, further action with regard to it will be deferred pending communication with the consignor.

ARTICLE 30. *Rejection of gold by Mint.*—Consignments which are unsuitable for Mint treatment shall be rejected and returned to the person delivering the same at his risk and expense. Consignments which the Mint is not satisfied were re-

covered from natural deposits in the United States or otherwise do not meet the requirements of these Regulations will be disposed of in accordance with applicable law.

ARTICLE 31. *Affidavits accompanying delivery of gold.*—Every person delivering gold produced exclusively from a mine or placer deposit owned, controlled, or leased by him, to the Secretary of the Treasury for sale shall at the time of the delivery of such gold file with the Mint a proper affidavit, in duplicate, on Form TG–7. Every person engaged in the business of operating a custom mill, smelter, or refinery shall at the time of such delivery file with the Mint a proper affidavit, in duplicate, on Form TG–8. If any person other than a person engaged in the business of operating a custom mill, smelter, or refinery, who delivers gold, has purchased the same in its natural state directly from persons who have recovered such gold from mines wholly owned, controlled, or leased by the sellers, such consignor shall at the time of delivery submit an affidavit, in duplicate, on Form TG–8 to which shall be attached affidavits on Form TG–7, executed by each person from whom any of such gold was purchased. One copy of such affidavit shall be forwarded by the Mint to the Director of the Mint.

ARTICLE 32. *Records and reports.*—Every person delivering gold on consignment for sale shall keep accurate records of all gold mined or acquired and such records shall be available for examination by a representative of the Treasury Department for at least one year after such delivery. Such person shall also file with the Director of the Mint, on or before the twenty-fifth day of each month after the

date the first consignment of gold is made, a report covering the period of the preceding calendar month. provided, that the first report shall cover the period from April 1, 1933, to the end of the calendar month preceding the date of the report. Such report shall be made under oath on Form TGR–7, if the consignor produces gold exclusively from mines or placer deposits which are wholly owned, controlled or leased by him, and on Form TGR–8, if the consignor is engaged in the business of operating a custom mill, smelter, or refinery. If the person delivering the gold is engaged in the business of purchasing gold in its natural state from others, such report shall be made on Form TGR–8.

ARTICLE 33. *Agreement by consignor.*—A Mint shall not receive gold for sale under the provisions of the Executive Order of August 29, 1933, unless full compliance with these Regulations is shown to its satisfaction, and until the person owning the gold, or his duly authorized agent, has signed a written agreement to accept as conclusive without any right of recourse or review, the determination of the Secretary of the Treasury or his duly authorized agent as to the amount due such person as a result of any sale of the gold deposited.

ARTICLE 34. *Disposition of gold received on consignment for sale.*—When, after a delivery of gold on consignment for sale, the Mint is satisfied that the same may properly be sold under the provisions of the Executive Order of August 29, 1933, and of these Regulations, and that the consignor has fully complied with the same, and after assay, it shall certify to the Federal Reserve bank in the district in which the Mint is located that it has available

for sale, in accordance with the Executive Order of August 29, 1933, for the account of the person by whom or on whose behalf the gold was consigned, the amount of gold shown by such assay, and shall also certify the Mint charges applicable thereto.

The Federal Reserve banks are authorized to sell such gold, as nearly as may be in the order of certification, to persons licensed to acquire gold for use in the arts, industries, or professions, at the price determined from time to time by the Secretary of the Treasury. The Secretary of the Treasury will telegraph daily to the Federal Reserve banks the price which he determines is equal to the best price obtainable in the free gold markets of the world, less expenses incident to shipment and sale. If such gold is not sold upon the day of or the two days (exclusive of Saturdays, Sundays, and Holidays) following its certification to a Federal Reserve bank, it shall be offered for sale to foreign purchasers by the Federal Reserve Bank of New York.

Proceeds of sales, less the charges determined by the Secretary, and Mint charges, shall be paid to the consignor by the Federal Reserve bank of the district where such gold was deposited. In cases of sales made abroad 98 percent of such net proceeds shall be paid upon receipt of telegraphic remittance from abroad, the remainder upon receipt of final statement by mail.

ARTICLE 35. *Export of gold.*—Gold sold to foreign purchasers under Article 34 may be exported by the Federal Reserve Bank of New York without requirement of a license. Such bank shall certify to the Collector of Customs of the port at

which export is to be made that such gold was so sold, and the Collector is authorized to permit the export thereof.

ARTICLE 36. *Export of fabricated gold.*—No article fabricated from gold shall be exported unless the value thereof depends upon the form and not upon the gold content of the article,[4] except that articles fabricated from gold sold to the applicant by a Federal Reserve bank pursuant to the Executive Order of August 29, 1933, may be exported under license issued pursuant to this Article.

(1) *Application for license.*—Application for license to export articles fabricated from gold sold pursuant to the Executive Order of August 29, 1933, shall be made on Form TG–9 and filed with the Federal Reserve bank from which the applicant acquired such gold. Each application shall be executed under oath before an officer authorized to administer oaths.

(2) *Licenses.*—Upon receipt of the application and after making such investigation as it may deem advisable, the Federal Reserve bank may issue a license on Form TGL–9 to export articles fabricated from an amount of gold not in excess of the gold sold to the applicant by such bank pursuant to the Executive Order of August 29, 1933.

(3) *Notice to Collectors of Customs and Postmasters.*—At the time any license is granted to export articles fabricated from gold, the issuing Federal Reserve bank shall notify the Collector of Customs at the port of export or the Postmaster designated in the application, as is required by

[4] See article 26 with respect to the export of articles the value of which depends upon the form.

Article 24, and the provisions of that Article shall be complied with insofar as applicable.

PART III

ARTICLE 37. *Forms available.*—Any form, the use of which is prescribed in these Regulations, may be obtained at United States Mints and Assay Offices and Federal Reserve banks and at the Treasury Department, Washington.

ARTICLE 38. *Revocation of prior regulations.*—The temporary Regulations issued under dates of August 31, September 1, and September 5, 1933, are revoked. The revocation of such Regulations shall not affect any act done or any right accruing or accrued or any suit had or commenced in any civil or criminal cause prior to said revocation, but all liabilities under said Regulations shall continue and may be enforced as if said revocation had not been made.

A license issued pursuant to the Regulations issued August 31, September 1, and September 5, 1933, to acquire, hold, earmark, or export gold coin, gold bullion, or gold certificates shall not be deemed to have been modified or revoked by reason of the revocation of such Regulations.

ARTICLE 39. *Modification of regulations.*—The provisions of these Regulations may be revoked or modified at any time.

DEAN ACHESON,
Acting Secretary of the Treasury.

EXECUTIVE ORDER NO. 6359, OCTOBER 25, 1933

RELATING TO GOLD RECOVERED FROM NATURAL DEPOSITS

By virtue of the authority vested in me by section 5(b) of the act of October 6, 1917, as amended by section 2 of the act of March 9, 1933, entitled "An Act to Provide Relief in the Existing National Emergency in Banking, and for other Purposes", I, FRANKLIN D. ROOSEVELT, PRESIDENT of the UNITED STATES OF AMERICA, do declare that a period of national emergency exists, and by virtue of said authority and of all other authority vested in me, do hereby issue the following Executive order:

SECTION 1. The Executive order of August 29, 1933, relating to the sale and export of gold recovered from natural deposits, is hereby revoked: *Provided, however,* That the Secretary of the Treasury is authorized to sell in accordance therewith gold received on consignment for sale on or before the date of this Executive order.

SEC. 2. The United States mints and assay offices are hereby authorized, subject to such regulations as may from time to time be prescribed by the Secretary of the Treasury, to receive on consignment gold which the mint or assay office to which the gold is delivered is satisfied has been recovered from natural deposits in the United States or any place subject to the jurisdiction thereof.

SEC. 3. The Reconstruction Finance Corporation is authorized, subject to such regulations as may from time to time be prescribed by the Secretary of the Treasury, to acquire gold which has been received on consignment by a United States mint or assay office, and to hold, earmark for foreign account, export, or otherwise dispose of such gold.

SEC. 4. The Executive order of August 28, 1933, relating to the hoarding, export, and earmarking of gold coin, bullion, or currency and to transactions in foreign exchange, is hereby amended to permit, subject to such regulations as may from time to time be prescribed by the Secretary of the Treasury, the export of articles fabricated from gold.

SEC. 5. The Secretary of the Treasury is hereby authorized and empowered to issue such regulations as he may deem necessary to carry out the purposes of this Executive order.

SEC. 6. This Executive order and any regulations issued hereunder may be modified or revoked at any time.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE,
October 25, 1933, 9 a. m.

ORDER OF THE SECRETARY OF THE TREASURY, DECEMBER 28, 1933

[REQUIRING THE DELIVERY OF GOLD COIN, GOLD BULLION, AND GOLD CERTIFICATES TO THE TREASURER OF THE UNITED STATES]

WHEREAS Section 11 of the Federal Reserve Act of December 23, 1913, as amended by Section 3 of the Act of March 9, 1933, entitled "An Act to provide Relief in the Existing National Emergency in Banking, and for Other Purposes", provides in Subsection (n) as follows:

> Whenever in the judgment of the Secretary of the Treasury such action is necessary to protect the currency system of the United

> States, the Secretary of the Treasury, in his discretion, may require any or all individuals, partnerships, associations and corporations to pay and deliver to the Treasurer of the United States any or all gold coin, gold bullion, and gold certificates owned by such individuals, partnerships, associations and corporations. Upon receipt of such gold coin, gold bullion or gold certificates, the Secretary of the Treasury shall pay therefor an equivalent amount of any other form of coin or currency coined or issued under the laws of the United States. The Secretary of the Treasury shall pay all costs of the transportation of such gold bullion, gold certificates, coin, or currency, including the cost of insurance, protection, and such other incidental costs as may be reasonably necessary. Any individual, partnership, association, or corporation failing to comply with any requirement of the Secretary of the Treasury made under this subsection shall be subject to a penalty equal to twice the value of the gold or gold certificates in respect of which such failure occurred, and such penalty may be collected by the Secretary of the Treasury by suit or otherwise.

and

WHEREAS in my judgment such action is necessary to protect the currency system of the United States;

NOW, THEREFORE, I, HENRY MORGENTHAU, JR., ACTING SECRETARY of the TREASURY, do hereby require every person subject to the jurisdiction of the United States forthwith to pay and deliver to the Treasurer of the United States all gold coin, gold bullion, and gold certificates situated in the

United States, owned by such person, except as follows:

A. Gold bullion owned by a person now holding such gold under a license heretofore granted by or under authority of the Secretary of the Treasury, pursuant to the Executive Order of August 28, 1933, Relating to the Hoarding, Export, and Earmarking of Gold Coin, Bullion, or Currency and to Transactions in Foreign Exchange;

B. Gold coin having a recognized special value to collectors of rare and unusual coin (but not including quarter eagles, otherwise known as $2.50 pieces);

C. Unmelted scrap gold and gold sweepings in an amount not exceeding in the aggregate $100 belonging to any one person; and gold which has been put through a process of fabrication for a specific and customary industrial, professional, or ornamental use;

D. Gold coin, gold bullion, and gold certificates owned by a Federal reserve bank or the Reconstruction Finance Corporation; and

E. Gold bullion and foreign gold coin now situated in the Philippine Islands, American Samoa, Guam, Hawaii, Panama Canal Zone, Puerto Rico, or the Virgin Islands of the United States, owned by a person not domiciled or doing business in the continental United States.

SECTION 2. *Delivery.*—The gold coin, gold bullion, and gold certificates herein required to be paid and delivered to the Treasurer of the United States shall be delivered by placing the same forthwith in the custody of a Federal reserve bank or branch

or a bank member of the Federal Reserve System for the account of the United States and by forwarding confirmation that the gold coin, gold bullion, and gold certificates have been so placed in custody for the account of the United States and are held subject to the order of the Treasurer of the United States, signed by such bank and the person making the delivery (or the authorized agent of such person) to the Treasurer of the United States, Washington, D. C., in a postage prepaid envelope bearing a postmark dated prior to midnight of the day the gold coin, gold bullion, and gold certificates are so placed in custody.

SECTION 3. *Payment and Reimbursement of Costs.*—Upon receipt of the confirmation signed and delivered as required under Section 2, the Secretary of the Treasury will pay for the gold coin, gold bullion, and gold certificates placed in custody for the account of the United States in accordance with Section 2, an equivalent amount of any form of coin or currency coined or issued under the laws of the United States designated by the Secretary of the Treasury. The Secretary of the Treasury will pay all costs of the transportation of such gold coin, gold bullion, and gold certificates to the Federal reserve bank or branch or bank member of the Federal Reserve System in the city or town nearest to the place where such gold coin, gold bullion, and gold certificates are now situated, including the cost of insurance, protection, and such other incidental costs as may be reasonably necessary. Persons desiring reimbursement for such costs actually incurred shall submit their accounts

on voucher forms which may be obtained by writing to the Treasurer of the United States, Washington, D. C.

SECTION 4. *Definitions.*—As used in this Order, the term "person" means any individual, partnership, association, or corporation; the term "United States" means the United States and any place subject to the jurisdiction thereof; the term "continental United States" means the States of the United States, the District of Columbia, and the Territory of Alaska; the term "gold coin" means any coin containing gold, including foreign gold coin; and the term "gold bullion" means any gold which has been put through a process of smelting or refining that is in such form that its value depends upon the gold content and not upon the form, but does not include gold coin or metals containing less than five troy ounces of fine gold per short ton.

SECTION 5. Any individual, partnership, association, or corporation failing to comply with any requirement hereof or of any rules or regulations issued by the Secretary of the Treasury hereunder shall be subject to the penalty provided in Section 11(n) of the Federal Reserve Act, as amended.

This order may be modified or revoked at any time.

H. MORGENTHAU, JR.,
Acting Secretary of the Treasury.

Approved:

FRANKLIN D. ROOSEVELT

THE WHITE HOUSE,
December 28, 1933.

(AMENDING PROCLAMATIONS OF MARCH 6 AND MARCH 9, 1933, AND THE EXECUTIVE ORDER OF MARCH 10, 1933, AND ALL ORDERS AND REGULATIONS PURSUANT THERETO)

PROCLAMATION OF THE PRESIDENT, DECEMBER 30, 1933

WHEREAS, on March 6, 1933, I, Franklin D. Roosevelt, President of the United States of America, by virtue of authority vested in me by the act of October 6, 1917 (40 Stat. L. 411), as amended, issued a proclamation declaring that an emergency existed and that a national banking holiday be observed;

WHEREAS, on March 9, 1933, I issued a proclamation continuing the terms and conditions of said proclamation of March 6, 1933, in full force and effect until further proclamation by the President;

WHEREAS, on March 10, 1933, I issued an Executive order authorizing the appropriate authority having immediate supervision of banking institutions in each State or any place subject to the jurisdiction of the United States to permit any banking institution not a member of the Federal Reserve System to perform any or all of its usual banking functions except as otherwise provided;

WHEREAS, the Secretary of the Treasury, pursuant to authority granted by other provisions of the said Executive order of March 10, 1933, has acted upon all requests for licensing of banks members of the Federal Reserve System;

WHEREAS, the Federal Deposit Insurance Corporation has acted upon all applications to it for membership in the Temporary Federal Deposit Insurance Fund as provided for in section 12B (y)

of the Federal Reserve Act as amended by section 8 of the act of June 16, 1933, Public, No. 66, Seventy-third Congress, and has admitted to the said fund all applicant banks which are duly and properly qualified; and

WHEREAS, it is now appropriate that the banking authority in each State and any place subject to the jurisdiction of the United States should have and exercise the sole responsibility for, and control over, banking institutions not members of the Federal Reserve System;

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, PRESIDENT of the UNITED STATES, in order to assure that the banking authority in each State and in any place subject to the jurisdiction of the United States shall have and exercise the sole responsibility for, and control over, banking institutions which are not members of the Federal Reserve System, do hereby proclaim, order, direct, and declare that the proclamations of March 6, 1933, and March 9, 1933, and the Executive order of March 10, 1933, and all orders and regulations pursuant thereto, are amended, effective the first day of January, nineteen hundred and thirty-four, to exclude from their scope banking institutions which are not members of the Federal Reserve System. PROVIDED, HOWEVER, That no banking institution shall pay out any gold coin, gold bullion, or gold certificates, except as authorized by the Secretary of the Treasury, nor allow the withdrawal of any currency for hoarding, nor engage in any transactions in foreign exchange except such as may be undertaken for legitimate and normal business requirements, for reasonable traveling and

other personal requirements, and for the fulfillment of contracts entered into prior to March 6, 1933.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done in the City of Washington this 30th day of December in the year of our Lord one thousand nine hundred and thirty-three, and of the Independence of the United States the one hundred and fifty-eighth.

[SEAL] FRANKLIN D. ROOSEVELT.

By the President:

WILLIAM PHILLIPS,
Acting Secretary of State.

[No. 2070]

EXECUTIVE ORDER NO. 6558, JANUARY 15, 1934

RELATING TO RECEIPT OF GOLD ON CONSIGNMENT BY THE MINTS AND ASSAY OFFICES

By virtue of the authority vested in me by section 5 (b) of the act of October 6, 1917, as amended by section 2 of the act of March 9, 1933, entitled "An Act to Provide Relief in the Existing National Emergency in Banking and for other Purposes", I, FRANKLIN D. ROOSEVELT, PRESIDENT of the UNITED STATES OF AMERICA, do declare that a period of national emergency exists, and by virtue of said authority and of all other authority vested in me, do hereby prescribe the following regulations for receiving gold on consignment for sale:

SECTION 1. The United States mints and assay offices are hereby authorized, subject to such regulations as may from time to time be prescribed by

the Secretary of the Treasury, to receive on consignment gold which the mint or assay office concerned is satisfied has not been held in noncompliance with the Executive orders, or the orders of the Secretary of the Treasury, issued under sections 2 and 3 of the act of March 9, 1933, or in noncompliance with any regulations or rulings made thereunder or licenses issued pursuant thereto.

SEC. 2. The Secretary of the Treasury is hereby authorized and empowered to issue such regulations as he may deem necessary to carry out the purposes of this Executive order.

SEC. 3. This Executive order and any regulations issued hereunder may be modified or revoked at any time.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE,
January 15, 1934.

[No. 6558]

EXECUTIVE ORDER NO. 6559, JANUARY 15, 1934

AMENDING THE EXECUTIVE ORDER OF MARCH 10, 1933, AND THE PROCLAMATION OF DECEMBER 30, 1933, CONCERNING THE OPERATION OF BANKS

By virtue of the authority vested in me by section 5 (b) of the act of October 6, 1917 (40 Stat. L. 411), as amended by the act of March 9, 1933, and by section 4 of said act of March 9, 1933, and by virtue of all other authority vested in me, I, FRANKLIN D. ROOSEVELT, PRESIDENT of the UNITED STATES OF AMERICA, do hereby issue the following Executive order:

SECTION 1. The last two paragraphs of the Executive order of March 10, 1933, concerning the operation of banks, are amended, effective from the date of this order, by striking out the following:

> nor to engage in any transaction in foreign exchange except such as may be undertaken for legitimate and normal business requirements, for reasonable traveling and other personal requirements, and for the fulfillment of contracts entered into prior to March 6, 1933.
>
> Every Federal Reserve bank is authorized and instructed to keep itself currently informed as to transactions in foreign exchange entered into or consummated within its district and shall report to the Secretary of the Treasury all transactions in foreign exchange which are prohibited.

The Secretary of the Treasury is authorized to amend the licenses heretofore issued with his approval by the Federal Reserve banks under the Executive order of March 10, 1933, by issuing through the Federal Reserve banks amendatory licenses removing the restriction upon transactions in foreign exchange contained in the licenses heretofore issued.

SEC. 2. The proclamation of December 30, 1933, relating to the licensing of banking institutions which are not members of the Federal Reserve System, is amended, effective from the date of this order, by striking out the following:

> nor to engage in any transaction in foreign exchange except such as may be undertaken for legitimate and normal business requirements, for reasonable traveling and other personal requirements, and for the fulfill-

ment of contracts entered into prior to March 6, 1933.

SEC. 3. The amendment of such Executive order of March 10, 1933, or of any licenses issued thereunder, and the amendment of such proclamation of December 30, 1933, shall not affect any act done, or any order, decision, or finding made, or relieve any person from the consequences of any unauthorized act committed prior to the date of this Executive order; nor shall the amendment of the Executive order of March 10, 1933, or the proclamation of December 30, 1933, relieve any person from the obligation of complying with the terms of the Executive order of January 15, 1934, relating to the export of coin and currency and transactions in foreign exchange, or the regulations or licenses issued thereunder, or of any other provision of law affecting transactions in foreign exchange.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE,
January 15, 1934.

EXECUTIVE ORDER NO. 6560, JANUARY 15, 1934

REGULATING TRANSACTIONS IN FOREIGN EXCHANGE, TRANSFERS OF CREDIT, AND THE EXPORT OF COIN AND CURRENCY

By virtue of the authority vested in me by section 5 (b) of the act of October 6, 1917 (40 Stat. L., 411), as amended by section 2 of the act of March 9, 1933, entitled "An Act to provide relief in the existing national emergency in banking and for other purposes", I, FRANKLIN D. ROOSEVELT, PRESI-

DENT of the UNITED STATES OF AMERICA, do declare that a period of national emergency continues to exist, and by virtue of said authority and of all other authority vested in me, do hereby prescribe the following regulations for the investigation, regulation, and prohibition of transactions in foreign exchange, transfers of credit between or payments by banking institutions as herein defined, and export of currency or silver coin, by any person within the United States or any place subject to the jurisdiction thereof:

SECTION 1. Every transaction in foreign exchange, transfer of credit between any banking institution within the United States and any banking institution outside of the United States (including any principal, agent, home office, branch, or correspondent outside of the United States of a banking institution within the United States), and the export or withdrawal from the United States of any currency or silver coin which is legal tender in the United States, by any person within the United States, is hereby prohibited, except under license therefor issued pursuant to this Executive order: *Provided, however,* That, except as prohibited under regulations prescribed by the Secretary of the Treasury, foreign exchange transactions and transfers of credit may be carried out without a license for (*a*) normal commercial or business requirements, (*b*) reasonable traveling and other personal requirements, or (*c*) the fulfillment of legally enforceable obligations incurred prior to March 9, 1933.

SEC. 2. *Possessions of the United States.*—Except as prohibited in regulations prescribed by the Secretary of the Treasury, transfers of credit be-

tween banking institutions in the continental United States and banking institutions in other places subject to the jurisdiction of the United States (including principals, agents, home offices, branches, or correspondents in such other places, of banking institutions within the continental United States) may be carried out without a license.

SEC. 3. *Licenses.*—The Secretary of the Treasury, acting directly or through any agencies that he may designate, and the Federal Reserve banks acting in accordance with such rules and regulations as the Secretary of the Treasury may from time to time prescribe, are hereby designated as agencies for the granting of licenses as hereinafter provided. Licenses may be granted authorizing such transactions in foreign exchange, transfers of credit, and exports of currency (other than gold certificates) or silver coin in such specific cases or classes of cases as the Secretary of the Treasury may determine in regulations prescribed hereunder and rulings made pursuant thereto.

SEC. 4. *Reports.*—The Federal Reserve banks shall keep themselves currently informed as to foreign exchange transactions entered into or consummated, and transfers of credit made between banking institutions outside of the continental United States and banking institutions, in their districts, and report to the Secretary of the Treasury all transactions in foreign exchange and all such transfers of credit not permitted under sections 1 or 2 hereof which are effected or attempted in their districts without a license.

SEC. 5. *Regulations.*—The Secretary of the Treasury is authorized and empowered to prescribe from time to time regulations to carry out the pur-

poses of this order, and to provide in such regulations or by rulings made pursuant thereto, the conditions under which licenses may be granted by the Federal Reserve banks and by such other agencies as the Secretary of the Treasury may designate; and the Secretary of the Treasury may require any person engaged in any transaction, transfer, export, or withdrawal referred to in this Executive order to furnish under oath complete information relative thereto, including the production of any books of account, contracts, letters, or other papers, in connection therewith in the custody or control of such person either before or after such transaction, transfer, export, or withdrawal is completed.

SEC. 6. *Penalties.*—Whoever willfully violates or knowingly participates in the violation of any provision of this Executive order or of any license, order, rule, or regulation issued or prescribed hereunder, shall be subject to the penalties provided in section 5 (*b*) of the act of October 6, 1917, as amended by section 2 of the act of March 9, 1933.

SEC. 7. *Definitions.*—As used in this Executive order the term "United States" means the United States and any place subject to the jurisdiction thereof; the term "continental United States" means the States of the United States, the District of Columbia, and the Territory of Alaska; the term "person" means an individual, partnership, association, or corporation; and the term "banking institution" includes any person engaged primarily or incidentally in the business of banking, of granting or transferring credits, or of purchasing and selling foreign exchange or procuring purchasers and sellers thereof, as principal or agent; and, for the purposes of this order, each home office, branch,

principal, agent, or correspondent of any person so engaged shall be regarded as a separate "banking institution."

SEC. 8. Section 8 of the Executive order of August 28, 1933, relating to the hoarding, export, and earmarking of gold coin, bullion, or currency and to transactions in foreign exchange, is hereby revoked.

This Executive order and any rules, regulations, or licenses prescribed or issued hereunder may be modified or revoked at any time.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE,
January 15, 1934.

ORDER OF THE SECRETARY OF THE TREASURY, JANUARY 15, 1934

[SUPPLEMENTING THE ORDER OF DECEMBER 28, 1933, REQUIRING THE DELIVERY OF GOLD COIN, GOLD BULLION, AND GOLD CERTIFICATES TO THE TREASURER OF THE UNITED STATES]

WHEREAS on December 28, 1933 I, HENRY MORGENTHAU, JR., as ACTING SECRETARY of the TREASURY, issued an Order under authority of Section 11 of the Federal Reserve Act of December 23, 1913, as amended by Section 3 of the Act of March 9, 1933, entitled "An Act to Provide Relief in the Existing National Emergency in Banking, and for Other Purposes";

WHEREAS said Order, as amended by an Order of January 11, 1934, required every person subject to the jurisdiction of the United States forthwith to pay and deliver to the Treasurer of the United States all gold coin, gold bullion, and gold certifi-

cates situated in the United States, owned by such person, except as follows:

A. Gold bullion owned by a person now holding such gold under a license heretofore granted by or under authority of the Secretary of the Treasury, pursuant to the Executive Order of August 28, 1933, Relating to the Hoarding, Export, and Earmarking of Gold Coin, Bullion, or Currency and to Transactions in Foreign Exchange;

B. Gold coin having a recognized special value to collectors of rare and unusual coin (but not including quarter eagles, otherwise known as $2.50 pieces, unless held, together with rare and unusual coin, as part of a collection for historical, scientific, or numismatic purposes, containing not more than four quarter eagles of the same date and design, and struck by the same mint);

C. Unmelted scrap gold and gold sweepings in an amount not exceeding in the aggregate $100 belonging to any one person; and gold which has been put through a process of fabrication for a specific and customary industrial, professional, or ornamental use;

D. Gold coin, gold bullion, and gold certificates owned by a Federal reserve bank or the Reconstruction Finance Corporation; and

E. Gold bullion and foreign gold coin now situated in the Philippine Islands, American Samoa, Guam, Hawaii, Panama Canal Zone, Puerto Rico, or the Virgin Islands of the United States, owned by a person not domiciled or doing business in the continental United States;

WHEREAS a reasonable time has elapsed within which any person required to deliver gold coin, gold bullion, and gold certificates could pay and de-

liver to the Treasurer of the United States in the manner provided in said Order of December 28, 1933, the gold coin, gold bullion, and gold certificates situated in the United States, owned by such person; and

WHEREAS in my judgment such action is necessary to protect the currency system of the United States;

NOW, THEREFORE, I, HENRY MORGENTHAU, JR., SECRETARY of the TREASURY, do hereby fix midnight of Wednesday, January 17, 1934 as the expiration of the period within which any gold coin, gold bullion, or gold certificates may be paid and delivered to the Treasurer of the United States in compliance with the requirements contained in such Order of December 28, 1933, as amended.

In the event that any gold coin, gold bullion or gold certificates withheld in noncompliance with said Order and of this Order are offered after January 17, 1934 to the Secretary of the Treasury, the Treasurer of the United States, any United States mint or assay office, or to any fiscal agent of the United States, there shall be paid therefor only such part or none of the amount otherwise payable therefor as the Secretary of the Treasury may from time to time prescribe and the whole or any balance shall be retained and applied to the penalty payable for failure to comply with the requirements of such Order and of this Order. The acceptance of any such coin, bullion, or certificates after January 17, 1934, whether or not a part or all of the amount otherwise payable therefor is so retained, shall be without prejudice to the right to collect by suit or otherwise the full penalty provided in Section 11 (n) of the Federal Reserve

Act, as amended, less such portion of the penalty as may have been retained as hereinbefore provided.

The definitions of the terms "person", "United States", "gold coin", and "gold bullion" contained in Section 4 of said Order of December 28, 1933 apply equally to such terms as used in this Order.

H. MORGENTHAU, Jr.,
Secretary of the Treasury.

APPROVED:

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE,
January 15, 1934.

INSTRUCTIONS SENT BY THE SECRETARY OF THE TREASURY ON JANUARY 17, 1934, TO THE TREASURER OF THE UNITED STATES, THE UNITED STATES MINTS AND ASSAY OFFICES AND THE FISCAL AGENTS OF THE UNITED STATES, CONCERNING WRONGFULLY WITHHELD GOLD COIN, GOLD BULLION AND GOLD CERTIFICATES DELIVERED AFTER JANUARY 17, 1934

The Order of the Secretary of the Treasury dated January 15, 1934, supplementing the Order of December 28, 1933, Requiring the Delivery of Gold Coin, Gold Bullion and Gold Certificates to the Treasurer of the United States provides, in part, as follows:

> * * * I, HENRY MORGENTHAU, Jr., SECRETARY of the TREASURY, do hereby fix midnight of Wednesday, January 17, 1934, as the expiration of the period within which any gold coin, gold bullion, or gold certifi-

cates may be paid and delivered to the Treasurer of the United States in compliance with the requirements contained in such Order of December 28, 1933, as amended.

In the event that any gold coin, gold bullion or gold certificates withheld in noncompliance with said Order and of this Order are offered after January 17, 1934, to the Secretary of the Treasury, the Treasurer of the United States, any United States mint or assay office, or to any fiscal agent of the United States, there shall be paid therefor only such part or none of the amount otherwise payable therefor as the Secretary of the Treasury may from time to time prescribe and the whole or any balance shall be retained and applied to the penalty payable for failure to comply with the requirements of such Order and of this Order. The acceptance of any such coin, bullion, or certificates after January 17, 1934, whether or not a part or all of the amount otherwise payable therefor is so retained, shall be without prejudice to the right to collect by suit or otherwise the full penalty provided in Section 11 (n) of the Federal Reserve Act, as amended, less such portion of the penalty as may have been retained as hereinbefore provided.

Subject to the rights reserved in said Order of January 15, 1934, supplementing the Order of December 28, 1933, requiring the delivery of gold coin, gold bullion and gold certificates to the Treasurer of the United States, and without prejudice to the right to alter or amend these instructions from time to time by notice to the Treasurer of the United States, the United States Mints and Assay Offices, and the Federal reserve banks, I do hereby prescribe that in the event that any gold

coin, gold bullion or gold certificates held in non-compliance with said Order of December 28, 1933, as amended, and said Order of January 15, 1934, are offered after January 17, 1934, to the Secretary of the Treasury, the Treasurer of the United States, any United States Mint or Assay Office or to any fiscal agent of the United States, the Secretary of the Treasury, the Treasurer of the United States, any United States Mint or Assay Office, and the fiscal agents of the United States shall pay for such gold coin and gold certificates the dollar face amount thereof, and for gold bullion $20.67 an ounce. Member banks of the Federal Reserve System may receive such gold coin, gold bullion and gold certificates for account of the Treasurer of the United States and forthwith forward the same to the Secretary of the Treasury, the Treasurer of the United States, any United States Mint or Assay Office or any fiscal agent of the United States, whichever is nearest.

H. MORGENTHAU, Jr.,
Secretary of the Treasury.

GOLD RESERVE ACT OF 1934, APPROVED JANUARY 30, 1934 (C. 6, 48 STAT. 337)

AN ACT To protect the currency system of the United States, to provide for the better use of the monetary gold stock of the United States, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the short title of this Act shall be the "Gold Reserve Act of 1934."

SEC. 2. (a) Upon the approval of this Act all right, title, and interest, and every claim of the

Federal Reserve Board, of every Federal Reserve bank, and of every Federal Reserve agent, in and to any and all gold coin and gold bullion shall pass to and are hereby vested in the United States; and in payment therefor credits in equivalent amounts in dollars are hereby established in the Treasury in the accounts authorized under the sixteenth paragraph of section 16 of the Federal Reserve Act, as heretofore and by this Act amended (U. S. C., title 12, sec. 467). Balances in such accounts shall be payable in gold certificates, which shall be in such form and in such denominations as the Secretary of the Treasury may determine. All gold so transferred, not in the possession of the United States, shall be held in custody for the United States and delivered upon the order of the Secretary of the Treasury; and the Federal Reserve Board, the Federal Reserve banks, and the Federal Reserve agents shall give such instructions and shall take such action as may be necessary to assure that such gold shall be so held and delivered.

(b) Section 16 of the Federal Reserve Act, as amended, is further amended in the following respects:

(1) The third sentence of the first paragraph is amended to read as follows: "They shall be redeemed in lawful money on demand at the Treasury Department of the United States, in the city of Washington, District of Columbia, or at any Federal Reserve bank."

(2) So much of the third sentence of the second paragraph as precedes the proviso is amended to read as follows: "The collateral security thus offered shall be notes, drafts, bills of exchange, or

acceptances acquired under the provisions of section 13 of this Act, or bills of exchange endorsed by a member bank of any Federal Reserve district and purchased under the provisions of section 14 of this Act, or bankers' acceptances purchased under the provisions of said section 14 or gold certificates:".

(3) The first sentence of the third paragraph is amended to read as follows: "Every Federal Reserve bank shall maintain reserves in gold certificates or lawful money of not less than 35 per centum against its deposits and reserves in gold certificates of not less than 40 per centum against its Federal Reserve notes in actual circulation: *Provided, however,* That when the Federal Reserve agent holds gold certificates as collateral for Federal Reserve notes issued to the bank such gold certificates shall be counted as part of the reserve which such bank is required to maintain against its Federal Reserve notes in actual circulation."

(4) The fifth and sixth sentences of the third paragraph are amended to read as follows: "Notes presented for redemption at the Treasury of the United States shall be paid out of the redemption fund and returned to the Federal Reserve banks through which they were originally issued, and thereupon such Federal Reserve bank shall, upon demand of the Secretary of the Treasury, reimburse such redemption fund in lawful money or, if such Federal Reserve notes have been redeemed by the Treasurer in gold certificates, then such funds shall be reimbursed to the extent deemed necessary by the Secretary of the Treasury in gold certificates, and such Federal Reserve bank shall, so long as any

of its Federal Reserve notes remain outstanding, maintain with the Treasurer in gold certificates an amount sufficient in the judgment of the Secretary to provide for all redemptions to be made by the Treasurer. Federal Reserve notes received by the Treasurer otherwise than for redemption may be exchanged for gold certificates out of the redemption fund hereinafter provided and returned to the Reserve bank through which they were originally issued, or they may be returned to such bank for the credit of the United States."

(5) The fourth, fifth, and sixth paragraphs are amended to read as follows:

"The Federal Reserve Board shall require each Federal Reserve bank to maintain on deposit in the Treasury of the United States a sum in gold certificates sufficient in the judgment of the Secretary of the Treasury for the redemption of the Federal Reserve notes issued to such bank, but in no event less than 5 per centum of the total amount of notes issued less the amount of gold certificates held by the Federal Reserve agent as collateral security; but such deposit of gold certificates shall be counted and included as part of the 40 per centum reserve hereinbefore required. The Board shall have the right, acting through the Federal Reserve agent, to grant in whole or in part, or to reject entirely the application of any Federal Reserve bank for Federal Reserve notes; but to the extent that such application may be granted the Federal Reserve Board shall, through its local Federal Reserve agent, supply Federal Reserve notes to the banks so applying, and such bank shall be charged with the amount of the notes issued to it and shall

pay such rate of interest as may be established by the Federal Reserve Board on only that amount of such notes which equals the total amount of its outstanding Federal Reserve notes less the amount of gold certificates held by the Federal Reserve agent as collateral security. Federal Reserve notes issued to any such bank shall, upon delivery, together with such notes of such Federal Reserve bank as may be issued under section 18 of this Act upon security of United States 2 per centum Government bonds, become a first and paramount lien on all the assets of such bank.

"Any Federal Reserve bank may at any time reduce its liability for outstanding Federal Reserve notes by depositing with the Federal Reserve agent its Federal Reserve notes, gold certificates, or lawful money of the United States. Federal Reserve notes so deposited shall not be reissued, except upon compliance with the conditions of an original issue.

"The Federal Reserve agent shall hold such gold certificates or lawful money available exclusively for exchange for the outstanding Federal Reserve notes when offered by the Reserve bank of which he is a director. Upon the request of the Secretary of the Treasury the Federal Reserve Board shall require the Federal Reserve agent to transmit to the Treasurer of the United States so much of the gold certificates held by him as collateral security for Federal Reserve notes as may be required for the exclusive purpose of the redemption of such Federal Reserve notes, but such gold certificates when deposited with the Treasurer shall be counted and considered as if collateral security on deposit with the Federal Reserve agent."

(6) The eighth paragraph is amended to read as follows:

"All Federal Reserve notes and all gold certificates and lawful money issued to or deposited with any Federal Reserve agent under the provisions of the Federal Reserve Act shall hereafter be held for such agent, under such rules and regulations as the Federal Reserve Board may prescribe, in the joint custody of himself and the Federal Reserve bank to which he is accredited. Such agent and such Federal Reserve bank shall be jointly liable for the safe-keeping of such Federal Reserve notes, gold certificates, and lawful money. Nothing herein contained, however, shall be construed to prohibit a Federal Reserve agent from depositing gold certificates with the Federal Reserve Board, to be held by such Board subject to his order, or with the Treasurer of the United States for the purposes authorized by law."

(7) The sixteenth paragraph is amended to read as follows:

"The Secretary of the Treasury is hereby authorized and directed to receive deposits of gold or of gold certificates with the Treasurer or any Assistant Treasurer of the United States when tendered by any Federal Reserve bank or Federal Reserve agent for credit to its or his account with the Federal Reserve Board. The Secretary shall prescribe by regulation the form of receipt to be issued by the Treasurer or Assistant Treasurer to the Federal Reserve bank or Federal Reserve agent making the deposit, and a duplicate of such receipt shall be delivered to the Federal Reserve Board by the Treasurer at Washington upon proper advices

from any Assistant Treasurer that such deposit has been made. Deposits so made shall be held subject to the orders of the Federal Reserve Board and shall be payable in gold certificates on the order of the Federal Reserve Board to any Federal Reserve bank or Federal Reserve agent at the Treasury or at the Subtreasury of the United States nearest the place of business of such Federal Reserve bank or such Federal Reserve agent. The order used by the Federal Reserve Board in making such payments shall be signed by the governor or vice governor, or such other officers or members as the Board may by regulation prescribe. The form of such order shall be approved by the Secretary of the Treasury."

(8) The eighteenth paragraph is amended to read as follows:

"Deposits made under this section standing to the credit of any Federal Reserve bank with the Federal Reserve Board shall, at the option of said bank, be counted as part of the lawful reserve which it is required to maintain against outstanding Federal Reserve notes, or as a part of the reserve it is required to maintain against deposits."

SEC. 3. The Secretary of the Treasury shall, by regulations issued hereunder, with the approval of the President, prescribe the conditions under which gold may be acquired and held, transported, melted or treated, imported, exported, or earmarked: (a) for industrial, professional, and artistic use; (b) by the Federal Reserve banks for the purpose of settling international balances; and, (c) for such other purposes as in his judgment are not inconsistent with the purposes of this Act. Gold

in any form may be acquired, transported, melted or treated, imported, exported, or earmarked or held in custody for foreign or domestic account (except on behalf of the United States) only to the extent permitted by, and subject to the conditions prescribed in, or pursuant to, such regulations. Such regulations may exempt from the provisions of this section, in whole or in part, gold situated in the Philippine Islands or other places beyond the limits of the continental United States.

SEC. 4. Any gold withheld, acquired, transported, melted or treated, imported, exported, or earmarked or held in custody, in violation of this Act or of any regulations issued hereunder, or licenses issued pursuant thereto, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law; and in addition any person failing to comply with the provisions of this Act or of any such regulations or licenses shall be subject to a penalty equal to twice the value of the gold in respect of which such failure occurred.

SEC. 5. No gold shall hereafter be coined, and no gold coin shall hereafter be paid out or delivered by the United States: *Provided, however,* That coinage may continue to be executed by the mints of the United States for foreign countries in accordance with the Act of January 29, 1874 (U. S. C., title 31, sec. 367). All gold coin of the United States shall be withdrawn from circulation and, together with all other gold owned by the United States, shall be formed into bars of such weights

and degrees of fineness as the Secretary of the Treasury may direct.

SEC. 6. Except to the extent permitted in regulations which may be issued hereunder by the Secretary of the Treasury with the approval of the President, no currency of the United States shall be redeemed in gold: *Provided, however,* That gold certificates owned by the Federal Reserve banks shall be redeemed at such times and in such amounts as, in the judgment of the Secretary of the Treasury, are necessary to maintain the equal purchasing power of every kind of currency of the United States: *And provided further,* That the reserve for United States notes and for Treasury notes of 1890, and the security for gold certificates (including the gold certificates held in the Treasury for credits payable therein) shall be maintained in gold bullion equal to the dollar amounts required by law, and the reserve for Federal Reserve notes shall be maintained in gold certificates, or in credits payable in gold certificates maintained with the Treasurer of the United States under section 16 of the Federal Reserve Act, as heretofore and by this Act amended.

No redemptions in gold shall be made except in gold bullion bearing the stamp of a United States mint or assay office in an amount equivalent at the time of redemption to the currency surrendered for such purpose.

SEC. 7. In the event that the weight of the gold dollar shall at any time be reduced, the resulting increase in value of the gold held by the United States (including the gold held as security for gold

certificates and as a reserve for any United States notes and for Treasury notes of 1890) shall be covered into the Treasury as a miscellaneous receipt; and, in the event that the weight of the gold dollar shall at any time be increased, the resulting decrease in value of the gold held as a reserve for any United States notes and for Treasury notes of 1890, and as security for gold certificates shall be compensated by transfers of gold bullion from the general fund, and there is hereby appropriated an amount sufficient to provide for such transfers and to cover the decrease in value of the gold in the general fund.

SEC. 8. Section 3700 of the Revised Statutes (U. S. C., title 31, sec. 734) is amended to read as follows:

"SEC. 3700. With the approval of the President, the Secretary of the Treasury may purchase gold in any amounts, at home or abroad, with any direct obligations, coin, or currency of the United States, authorized by law, or with any funds in the Treasury not otherwise appropriated, at such rates and upon such terms and conditions as he may deem most advantageous to the public interest; any provision of law relating to the maintenance of parity, or limiting the purposes for which any of such obligations, coin, or currency, may be issued, or requiring any such obligations to be offered as a popular loan or on a competitive basis, or to be offered or issued at not less than par, to the contrary notwithstanding. All gold so purchased shall be included as an asset of the general fund of the Treasury."

SEC. 9. Section 3699 of the Revised Statutes (U. S. C., title 31, sec. 733) is amended to read as follows:

"SEC. 3699. The Secretary of the Treasury may anticipate the payment of interest on the public debt, by a period not exceeding one year, from time to time, either with or without a rebate of interest upon the coupons, as to him may seem expedient; and he may sell gold in any amounts, at home or abroad, in such manner and at such rates and upon such terms and conditions as he may deem most advantageous to the public interest, and the proceeds of any gold so sold shall be covered into the general fund of the Treasury: *Provided, however,* That the Secretary of the Treasury may sell the gold which is required to be maintained as a reserve or as security for currency issued by the United States, only to the extent necessary to maintain such currency at a parity with the gold dollar."

SEC. 10. (a) For the purpose of stabilizing the exchange value of the dollar, the Secretary of the Treasury, with the approval of the President, directly or through such agencies as he may designate, is authorized, for the account of the fund established in this section, to deal in gold and foreign exchange and such other instruments of credit and securities as he may deem necessary to carry out the purpose of this section. An annual audit of such funds shall be made and a report thereof submitted to the President.

(b) To enable the Secretary of the Treasury to carry out the provisions of this section there is hereby appropriated, out of the receipts which are directed to be covered into the Treasury under sec-

tion 7 hereof, the sum of $2,000,000,000, which sum when available shall be deposited with the Treasurer of the United States in a stabilization fund (hereinafter called the "fund") under the exclusive control of the Secretary of the Treasury, with the approval of the President, whose decisions shall be final and not be subject to review by any other officer of the United States. The fund shall be available for expenditure, under the direction of the Secretary of the Treasury and in his discretion, for any purpose in connection with carrying out the provisions of this section, including the investment and reinvestment in direct obligations of the United States of any portions of the fund which the Secretary of the Treasury, with the approval of the President, may from time to time determine are not currently required for stabilizing the exchange value of the dollar. The proceeds of all sales and investments and all earnings and interest accruing under the operations of this section shall be paid into the fund and shall be available for the purposes of the fund.

(c) All the powers conferred by this section shall expire two years after the date of enactment of this Act, unless the President shall sooner declare the existing emergency ended and the operation of the stabilization fund terminated; but the President may extend such period for not more than one additional year after such date by proclamation recognizing the continuance of such emergency.

SEC. 11. The Secretary of the Treasury is hereby authorized to issue, with the approval of the President, such rules and regulations as the Secretary may deem necessary or proper to carry out the purposes of this Act.

SEC. 12. Paragraph (b) (2), of section 43, title III, of the Act approved May 12, 1933 (Public, Numbered 10, Seventy-third Congress), is amended by adding two new sentences at the end thereof, reading as follows:

"Nor shall the weight of the gold dollar be fixed in any event at more than 60 per centum of its present weight. The powers of the President specified in this paragraph shall be deemed to be separate, distinct, and continuing powers, and may be exercised by him, from time to time, severally or together, whenever and as the expressed objects of this section in his judgment may require; except that such powers shall expire two years after the date of enactment of the Gold Reserve Act of 1934 unless the President shall sooner declare the existing emergency ended, but the President may extend such period for not more than one additional year after such date by proclamation recognizing the continuance of such emergency."

Paragraph (2) of subsection (b) of section 43, title III, of an act entitled "An act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes", approved May 12, 1933, is amended by adding at the end of said paragraph (2) the following:

"The President, in addition to the authority to provide for the unlimited coinage of silver at the ratio so fixed, under such terms and conditions as

he may prescribe, is further authorized to cause to be issued and delivered to the tenderer of silver for coinage, silver certificates in lieu of the standard silver dollars to which the tenderer would be entitled and in an amount in dollars equal to the number of coined standard silver dollars that the tenderer of such silver for coinage would receive in standard silver dollars.

"The President is further authorized to issue silver certificates in such denominations as he may prescribe against any silver bullion, silver, or standard silver dollars in the Treasury not then held for redemption of any outstanding silver certificates, and to coin standard silver dollars or subsidiary currency for the redemption of such silver certificates.

"The President is authorized, in his discretion, to prescribe different terms and conditions and to make different charges, or to collect different seigniorage, for the coinage of silver of foreign production than for the coinage of silver produced in the United States or its dependencies. The silver certificates herein referred to shall be issued, delivered, and circulated substantially in conformity with the law now governing existing silver certificates, except as may herein be expressly provided to the contrary, and shall have and possess all of the privileges and the legal tender characteristics of existing silver certificates now in the Treasury of the United States, or in circulation.

"The President is authorized, in addition to other powers, to reduce the weight of the standard silver dollar in the same percentage that he reduces the weight of the gold dollar.

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"The President is further authorized to reduce and fix the weight of subsidiary coins so as to maintain the parity of such coins with the standard silver dollar and with the gold dollar."

SEC. 13. All actions, regulations, rules, orders, and proclamations heretofore taken, promulgated, made or issued by the President of the United States or the Secretary of the Treasury, under the Act of March 9, 1933, or under section 43 or section 45 of title III of the Act of May 12, 1933, are hereby approved, ratified, and confirmed.

SEC. 14. (a) The Second Liberty Bond Act, as amended, is further amended as follows:

(1) By adding at the end of section 1 (U. S. C., title 31, sec. 752; Supp. VII, title 31, sec. 752), a new paragraph as follows:

"Notwithstanding the provisions of the foregoing paragraph, the Secretary of the Treasury may from time to time, when he deems it to be in the public interest, offer such bonds otherwise than as a popular loan and he may make allotments in full, or reject or reduce allotments upon any applications whether or not the offering was made as a popular loan."

(2) By inserting in section 8 (U. S. C., title 31, sec. 771), after the words "certificates of indebtedness", a comma and the words "Treasury bills".

(3) By striking out the figures "$7,500,000,000" where they appear in section 18 (U. S. C., title 31, sec. 753) and inserting in lieu thereof the figures "$10,000,000,000."

(4) By adding thereto two new sections, as follows:

"SEC. 19. Notwithstanding any other provisions of law, any obligations authorized by this Act may

be issued for the purchase, redemption, or refunding, at or before maturity, of any outstanding bonds, notes, certificates of indebtedness, or Treasury bills, of the United States, or to obtain funds for such purchase, redemption, or refunding, under such rules, regulations, terms, and conditions as the Secretary of the Treasury may prescribe.

"SEC. 20. The Secretary of the Treasury may issue any obligations authorized by this Act and maturing not more than one year from the date of their issue on a discount basis and payable at maturity without interest. Any such obligations may also be offered for sale on a competitive basis under such regulations and upon such terms and conditions as the Secretary of the Treasury may prescribe, and the decisions of the Secretary in respect of any issue shall be final."

(b) Section 6 of the Victory Liberty Loan Act (U. S. C., title 31, sec. 767; Supp. VII, title 31, secs. 767–767a) is amended by striking out the words "for refunding purposes", together with the preceding comma, at the end of the first sentence of subsection (a).

(c) The Secretary of the Treasury is authorized to issue gold certificates in such form and in such denominations as he may determine, against any gold held by the Treasurer of the United States, except the gold fund held as a reserve for any United States notes and Treasury notes of 1890. The amount of gold certificates issued and outstanding shall at no time exceed the value, at the legal standard, of the gold so held against gold certificates.

SEC. 15. As used in this Act the term "United States" means the Government of the United States; the term "the continental United States" means the States of the United States, the District of Columbia, and the Territory of Alaska; the term "currency of the United States" means currency which is legal tender in the United States, and includes United States notes, Treasury notes of 1890, gold certificates, silver certificates, Federal Reserve notes, and circulating notes of Federal Reserve banks and national banking associations; and the term "person" means any individual, partnership, association, or corporation, including the Federal Reserve Board, Federal Reserve banks, and Federal Reserve agents. Wherever reference is made in this Act to equivalents as between dollars or currency of the United States and gold, one dollar or one dollar face amount of any currency of the United States equals such a number of grains of gold, nine-tenths fine, as, at the time referred to, are contained in the standard unit of value, that is, so long as the President shall not have altered by proclamation the weight of the gold dollar under the authority of section 43, title III, of the Act approved May 12, 1933, as heretofore and by this Act amended, twenty-five and eight-tenths grains of gold, nine-tenths fine, and thereafter such a number of grains of gold, nine-tenths fine, as the President shall have fixed under such authority.

SEC. 16. The right to alter, amend, or repeal this Act is hereby expressly reserved. If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder

of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

SEC. 17. All Acts and parts of Acts inconsistent with any of the provisions of this Act are hereby repealed.

Approved, January 30, 1934.

PROVISIONAL REGULATIONS ISSUED UNDER THE GOLD RESERVE ACT OF 1934

ARTICLE I. GENERAL PROVISIONS

SECTION 1. *Authority for regulations.*—These regulations, deemed necessary and proper by the Secretary of the Treasury to carry out the purposes of the Gold Reserve Act of 1934, approved January 30, 1934, are issued by the Secretary of the Treasury, with the approval of the President, under authority of said Act.

SEC. 2. *Scope.*—Articles II, III, IV, and V of these regulations refer particularly to section 3 of the Gold Reserve Act of 1934; and articles VI and VII refer particularly to sections 8 and 9, respectively, thereof.

The provisions of these regulations may be revoked or modified at any time and any license outstanding at the time of such revocation or modification shall be modified thereby to the extent provided in such revocation or modification.

SEC. 3. *Titles and subtitles.*—The titles and subtitles of these regulations are inserted for purposes of ready reference and are not to be construed as constituting a part of these regulations.

SEC. 4. *Definitions.*—As used in these regulations, the term—

"Act" means the Gold Reserve Act of 1934, approved January 30, 1934.

"United States" means the Government of the United States, or, where used to denote a geographical area, means the continental United States and all other places subject to the jurisdiction of the United States.

"Continental United States" means the States of the United States, the District of Columbia, and the Territory of Alaska.

"Currency of the United States" means currency which is legal tender in the continental United States, and includes United States notes, Treasury notes of 1890, gold certificates, silver certificates, Federal Reserve notes, and circulating notes of Federal Reserve banks and national banking associations.

"Person" means any individual, partnership, association, or corporation, including the Federal Reserve Board, Federal Reserve banks, and Federal Reserve agents.

"Mint" means a United States mint or assay office, and wherever authority is conferred upon a "mint" such authority is conferred upon the person locally in charge of the respective United States mint or assay office acting in accordance with the instructions of the Director of the Mint or the Secretary of the Treasury.

"Mint district" means one of the following areas:

The mint district of Philadelphia, which for the purposes of these regulations consists of the States

of Illinois, Indiana, Kentucky, Maryland, Missouri, North Carolina, Ohio, Pennsylvania, South Carolina, Virginia, and West Virginia, and the District of Columbia.

The mint district of New York, which for the purposes of these regulations consists of the States of Connecticut, Delaware, Maine, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Rhode Island, Vermont, and Wisconsin, and Puerto Rico, the Virgin Islands of the United States and the Panama Canal Zone.

The mint district of Denver, which for the purposes of these regulations consists of the States of Colorado, Iowa, Kansas, Minnesota, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Utah, and Wyoming.

The mint district of San Francisco, which for the purposes of these regulations consists of the States of Arizona, California, and Nevada, and the Territories and possessions of the United States not specifically included in other mint districts.

The mint district of Seattle, which for the purposes of these regulations, consists of the States of Idaho, Montana, Oregon, and Washington, and the Territory of Alaska.

The mint district of New Orleans, which for the purposes of these regulations, consists of the States of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Tennessee, and Texas.

"Gold coin" means any coin containing gold as a major element, including gold coin of a foreign country.

"Gold bullion" means any gold which has been put through a process of smelting or refining, and

which is in such state or condition that its value depends primarily upon the gold content and not upon its form; but it does not include metals containing less than 5 troy ounces of fine gold per short ton, nor does it include gold coin.

"Fabricated gold" means gold which has, in good faith and not for the purpose of evading, or enabling others to evade, the provisions of the Act or of these regulations, been processed or manufactured for some one or more specific and customary industrial, professional, or artistic uses, but does not include gold coin or scrap gold.

"Scrap gold" means gold sweepings and fabricated gold, the value of which depends primarily upon its gold content and not upon its form, which is no longer held for the use for which it was processed or manufactured.

Wherever reference is made in these regulations to *equivalents as between dollars or currency of the United States and gold,* $1 or $1 face amount of any currency of the United States equals such a number of grains of gold, nine-tenths fine, as, at the time referred to, are contained in the standard unit of value, that is, so long as the President shall not have altered by proclamation the weight of the gold dollar under the authority of section 43, title III, of the Act approved May 12, 1933, as heretofore and by the Act amended, twenty-five and eight-tenths grains of gold, nine-tenths fine, and thereafter such a number of grains of gold, nine-tenths fine, as the President shall have fixed under such authority.

Wherever reference is made in these regulations to "articles" or "sections", the reference is, unless

otherwise indicated, to the designated articles and sections of these regulations.

SEC. 5. *General provisions affecting applications, affidavits, and reports.*—Every application, affidavit, and report required to be made hereunder shall be made upon the appropriate form prescribed by the Secretary of the Treasury and, except insofar as these regulations may otherwise specify, shall be executed under oath before an officer authorized to administer oaths. Duplicate copies properly executed shall be filed with the agencies designated in these regulations for that purpose. Action upon any application or affidavit may be withheld pending the furnishing of any or all of the information required in such forms or of such additional information as may be deemed necessary by the Secretary of the Treasury, or the agency authorized or directed to act hereunder. There shall be attached to the applications, affidavits or reports such instruments as may be required by the terms thereof and such further instruments as may be required by the Secretary of the Treasury, or by such agency. Whenever additional information is requested it shall be furnished under oath.

SEC. 6. *General provisions affecting licenses.*—(1) Licenses issued pursuant to these regulations shall be upon the appropriate form prescribed by the Secretary of the Treasury. Licenses shall be nontransferable and shall entitle the licensee to acquire, transport, melt or treat, import, export, or earmark or hold in custody for foreign or domestic account, gold only in such form and to the extent permitted by, and subject to the conditions prescribed in, these regulations and such licenses.

(2) Licenses may be modified or revoked at any time in the discretion of the Secretary of the Treasury acting directly, or through the agency which issued the license, or any other agency designated by the Secretary of the Treasury. In the event that a license is modified or revoked (other than by a modification or revocation of these regulations), the Secretary of the Treasury, or the agency through which the license was issued, or such other agency designated by the Secretary of the Treasury, shall advise the licensee by letter mailed to the address of the licensee set forth in the application. The licensee, upon receipt of such advice, shall forthwith surrender his license as directed in such advice. If the license has been modified but not revoked, the Secretary of the Treasury, or the agency through which the original license was issued, shall thereupon issue a modified license.

(3) No license issued hereunder shall authorize the licensee to hold any gold coin, or any gold melted by any person from gold coin, unless the license contains a specific provision to that effect.

(4) No license issued hereunder shall exempt the licensee from the duty of complying with the legal requirements of any State or Territory or local authority.

(5) No license shall be issued to any person doing business under a name which, in the opinion of the Secretary of the Treasury or the designated agency issuing the license, is designed or is likely to induce the belief that gold is purchased, treated, or sold on behalf of the United States or for the purpose of carrying out any policy of the United States.

SEC. 7. *General provisions affecting export licenses.*—At the time any license to export gold is issued, the Federal Reserve bank or mint issuing the same shall transmit a copy thereof to the collector of customs at the port of export designated in the license. Collectors of customs shall not permit the export or transportation from the continental United States of gold in any form except upon surrender of a license to export, a copy of which has been received by him from the Federal Reserve bank or the mint issuing such license: *Provided, however,* That the export or transportation from the continental United States of fabricated gold may be permitted subject to the provisions of section 16 (2): *And provided further,* That gold held by the Federal Reserve banks under article IV may be exported for the purposes of such article without a license. The collector of customs to whom a license to export is surrendered shall cancel such license and return it to the Federal Reserve bank or mint which issued the same. In the event that the shipment is to be made by mail, a copy of the export license shall be sent to the postmaster of the post office designated in the application, who will act under the instructions of the Postmaster General in regard thereto.

SEC. 8. *General provisions affecting import licenses.*—No gold in any form imported into the United States shall be permitted to enter until the person importing such gold shall have satisfied the collector of customs at the port of entry that he holds a license authorizing him to import such gold or that such gold may be imported without a license under the provisions of article II or IV. Postmasters receiving packages containing gold will de-

liver such gold subject to the instructions of the Postmaster General.

SEC. 9. *Forms available.*—Any form, the use of which is prescribed in these regulations, may be obtained at, or on written request to, any United States mint or assay office, Federal Reserve bank, and at the Treasury Department, Washington, D. C.

SEC. 10. *Representations by licensees.*—Licensees may include in public and private representations or statements the clause "licensed on form TGL ------ (here inserting the number of the form of license held by the licensee) pursuant to the regulations prescribed under the Gold Reserve Act of 1934", but any representation or statement which might induce the belief that the licensee is acting or is especially privileged to act on behalf of or for the United States, or is purchasing, treating, or selling gold for the United States, or in any way dealing in gold for the purpose of carrying out any policy of the United States, shall be a violation of the conditions of the license. Each agency issuing licenses hereunder which receives notice of any such representations or statements made by or with the acquiescence of any licensee shall promptly notify the Secretary of the Treasury in order that he may advise it whether or not the license of the person making such representations or statements, or permitting such representations or statements to be made, should be revoked.

SEC. 11. *Penalties.*—Any gold withheld, acquired, transported, melted or treated, imported, exported, or earmarked or held in custody in violation of the Act, or of any regulations issued thereunder, includ-

ing these regulations, or of any licenses issued pursuant thereto or hereto, shall be forfeited to the United States and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law; and, in addition, any person failing to comply with the provisions of the Act or of any such regulations or licenses shall be subject to a penalty equal to twice the value of the gold in respect of which such failure occurred.

ARTICLE II. CONDITIONS UNDER WHICH GOLD MAY BE ACQUIRED AND HELD, TRANSPORTED, MELTED, OR TREATED, IMPORTED, EXPORTED, OR EARMARKED OR HELD IN CUSTODY FOR FOREIGN OR DOMESTIC ACCOUNT

SEC. 12. Gold in any form may be acquired, transported, melted or treated, imported, exported, or earmarked or held in custody for foreign or domestic account (except on behalf of the United States), only to the extent permitted by, and subject to the conditions prescribed in, these regulations or licenses issued pursuant to these regulations.

SEC. 13. *Transportation of gold.*—Gold may be transported by carriers for persons who are licensed to hold and transport such gold or who are permitted by these regulations to hold and transport gold without a license.

SEC. 14. *Gold situated outside of the United States.*—Gold in any form situated outside of the United States may be acquired, transported, melted or treated, or earmarked or held in custody for

foreign or domestic account without the necessity of holding a license.

SEC. 15. *Gold situated in the possessions of the United States.*—Gold in any form (other than United States gold coin) situated in places subject to the jurisdiction of the United States beyond the limits of the continental United States may be acquired, transported, melted or treated, imported, exported, or earmarked or held in custody for the account of persons other than residents of the continental United States, by persons not domiciled in the continental United States: *Provided, however,* That gold may be transported from the continental United States to the possessions of the United States only under license for export issued pursuant to sections 25 (3), 32, 33, or 34, or, if fabricated gold, subject to the conditions specified in section 16 (2).

SEC. 16. *Fabricated gold.*—(1) Fabricated gold may be acquired, transported within the United States, imported, or held in custody for domestic account without the necessity of holding a license therefor: *Provided, however,* That it may be transported from the continental United States to other places subject to the jurisdiction of the United States only subject to the conditions hereinafter specified in paragraph (2) of this section.

(2) Fabricated gold may be exported, or transported from the continental United States, without the necessity of obtaining a license, provided that an affidavit shall have been executed on form TG–10 and filed in duplicate with the collector of customs at the port of shipment from the continental United States or with the postmaster at the

place of mailing; and such collector or postmaster shall have endorsed on the duplicate copy of such affidavit that he is satisfied that the shipment from the continental United States is not being made for the purpose of holding or disposing of the fabricated gold outside of the continental United States primarily for the value of the gold content: *Provided further*, That persons leaving the continental United States may carry with them fabricated gold owned by them and for their personal use in its fabricated form of a fine gold content not exceeding 15 ounces without the necessity of filing such affidavit or obtaining an export license.

SEC. 17. *Metals containing gold.*—Metals containing not more than 5 troy ounces of fine gold per short ton may be acquired, transported within the United States, imported, or held in custody for domestic account without the necessity of obtaining a license therefor. Such metals may be melted or treated, exported, and held in custody for foreign account only to the extent permitted by, and subject to the conditions prescribed in, or pursuant to, article III.

SEC. 18. *Unmelted scrap gold.*—Unmelted scrap gold may be held and transported within the United States in amounts containing not more than 5 troy ounces of fine gold without the necessity of holding a license.

SEC. 19. *Gold in its natural state.*—Gold in its natural state (i.e., gold recovered from natural sources which has not been melted, smelted, or refined or otherwise treated by heating or by a chemical or electrical process) may be acquired, transported within the United States, imported, or held

in custody for domestic account without the necessity of holding a license therefor. Such native gold may be melted or treated or exported only to the extent permitted by, and subject to the conditions prescribed in, or pursuant to, article III.

SEC. 20. *Rare coin.*—Gold coin of recognized special value to collectors of rare and unusual coin (but not including quarter eagles, otherwise known as $2.50 pieces, unless held, together with rare and unusual coin and as part of a collection for historical, scientific, or numismatic purposes, containing not more than four quarter eagles of the same date and design, and struck by the same mint) may be acquired and held, transported within the United States, imported, or held in custody for domestic account without the necessity of holding a license therefor. Such coin may be exported only under license on form TGL–11 issued by the Director of the Mint. Application for such a license shall be executed on form TG–11 and filed with the Director of the Mint, Washington, D. C.

ARTICLE III. GOLD FOR INDUSTRIAL, PROFESSIONAL, AND ARTISTIC USE

SECTION 21. "*Twenty-five-ounce exemption*".—Any person requiring gold for use in the industry, profession, or art in which he is regularly engaged may replenish his stocks of gold (in addition to fabricated gold) up to the amount actually required for a period not exceeding 3 months (but in no event in an aggregate amount exceeding 25 ounces of fine gold held at any one time) by acquisitions of gold bullion held under licenses issued pursuant to section 23, without the necessity

of obtaining a license for such acquisitions; and the gold so acquired may be held, transported, melted or treated, for use by such person in his industry, profession, or art but for no other purpose. Gold may not be acquired and held under this section by persons engaged primarily or incidentally in the business of buying and selling gold other than fabricated gold.

SEC. 22. *Licenses required.*—Except as permitted in article II and in section 21 of this article, gold may be acquired and held, transported, melted or treated, imported, exported, or earmarked for industrial, professional, or artistic use only to the extent permitted by licenses issued under section 23 hereof.

SEC. 23. *Purposes for which licenses shall be issued.*—The mints shall issue licenses authorizing the acquisition and holding, transportation, melting and treating, importing, exporting, and holding for domestic account of gold which the mint is satisfied is required for legitimate and customary use in industry, profession, or art, by an applicant regularly engaged in the mint district of such mint (1) in the business of furnishing or processing gold for industry, profession, or art, or for sale to the United States, (2) in an industry, profession, or art in which stocks of gold in excess of 25 fine ounces are required to be maintained by the applicant.

SEC. 24. *Applications.*—Every application for a license under section 23 shall be made on Form TG–12 (except that applications for export shall be made on form TG–15) and shall be filed in duplicate with the United States mint for the mint district in which is located the applicant's prin-

cipal place of business. No person shall make application to more than one mint; and, in the event any one person is, through misrepresentation or mistake, issued a license under this article by more than one mint, all licenses issued to such person shall be void from the date of issuance to such person of a license by a second mint. Every applicant for a license under section 23 shall state in his application whether or not any applications have been filed by or licenses issued to any partnership, association, or corporation in which the applicant has a substantial interest or if the applicant is a partnership, association, or corporation, by or to a person having a substantial interest in such partnership, association, or corporation. No mint shall issue any license to any person if in its judgment more than one license for the same purpose will be held for the principal use or benefit of the same persons or interests. Any person licensed under this article acquiring a principal interest in any partnership, association, or corporation holding a license under this article for this purpose shall immediately so inform the mints which issued the licenses.

SEC. 25. *Licenses.*—(1) Upon receipt of the application and after making such investigation of the case as it may deem advisable, the mint, if satisfied that gold is necessary for the legitimate and customary requirements of the applicant's industry, profession, art, or business, shall issue to the applicant a license on form TGL–12, TGL–13, or TGL–14, whichever is designated in rulings of the Secretary of the Treasury for the kind of business, industry, profession, or art in which the applicant is engaged.

(2) Licenses issued under this article may entitle the licensee to acquire and hold not to exceed a maximum amount specified therein, which amount shall not be greater than the estimated requirements of the licensee for a period of 3 months; and such license may authorize the licensee to transport such gold from place to place within the United States, melt or treat it to the extent necessary to meet the requirements of the industry, profession, or art for which it was acquired and held or otherwise to carry out the purposes for which it is held under license, and may authorize the licensee to import gold so long as the maximum amount of gold held after importation does not exceed the maximum amount authorized by the license to be held.

(3) No license on form TGL–12, TGL–13, or TGL–14, shall authorize the licensee to export or transport from the continental United States, without a supplementary license on form TGL–15 issued by the mint which issued the license on form TGL–12, TGL–13, or TGL–14, gold in any form (except that fabricated gold may be exported or transported from the continental United States subject to the conditions specified in section 16 (2)). Export licenses on form TGL–15 shall be issued only with the approval of the Secretary of the Treasury, and upon application made on form TG–15 showing to the satisfaction of the mint and the Secretary of the Treasury that the export or transport from the continental United States is for a specific and customary industrial, professional, or artistic use connected with the applicant's business, and not for the purpose of using or holding

or disposing of such gold beyond the limits of the continental United States as, or in lieu of, money, or for the value of its gold content.

(4) No license issued under this article shall entitle the licensee to acquire and hold, transport, melt or treat, import or export, or hold in custody any gold coin.

SEC. 26. *Records.*—Every person holding a license issued pursuant to section 23 shall keep exact records of all his acquisitions and deliveries of gold. His records shall contain the name, address, and license number of each person from whom he acquires, or to whom he delivers, gold (other than fabricated gold) and shall show the amount, date, and description of each such acquisition and delivery, and such records shall be available for examination by a representative of the Treasury Department for at least 1 year after the date of the disposition of such gold.

SEC. 27. *Reports.*—Every person holding a license on form TGL–12, TGL–13, or TGL–14 shall file with the mint which issued his license, on or before the 15th day of February, May, August, and November, a report on form TGR–12, TGR–13, or TGR–14, respectively, for the quarter ending on the first day of such months.

ARTICLE IV. GOLD FOR THE PURPOSE OF SETTLING INTERNATIONAL BALANCES, AND FOR OTHER PURPOSES

SEC. 28. The Federal Reserve banks may from time to time acquire from the United States by redemption of gold certificates in accordance with section 6 of the Act, such amounts of gold bullion as, in the judgment of the Secretary of the Treas-

ury, are necessary to settle international balances or to maintain the equal purchasing power of every kind of currency of the United States. Such banks may also acquire gold abroad or may acquire gold in the United States which has not been held in noncompliance with the Executive orders, or the orders of the Secretary of the Treasury, issued under sections 2 and 3 of the Act of March 9, 1933, entitled "An act to provide relief in the existing national emergency in banking and for other purposes", or in noncompliance with any regulations or rulings made thereunder or licenses issued pursuant thereto, or acquired and held, transported, melted or treated, imported, exported, earmarked or held in custody for foreign or domestic account in violation of the Act or regulations issued thereunder, including these regulations.

SEC. 29. The gold acquired under section 28 may be held, transported, imported, exported, or earmarked or held in custody for foreign or domestic account for the purposes of settling international balances or maintaining the equal purchasing power of every kind of currency of the United States: *Provided,* That if the gold is not used for such purposes within 6 months from the date of acquisition, it shall (unless the Secretary of the Treasury shall have extended the period within which such gold may be so held) be paid and delivered to the Treasurer of the United States against payment therefor by credits in equivalent amounts in dollars in the accounts authorized under the sixteenth paragraph of section 16 of the Federal Reserve Act, as amended.

SEC. 30. The provisions of this article shall not be construed to permit any person subject to the

jurisdiction of the United States, other than a Federal Reserve bank, to acquire gold for the purposes specified in this article, or to permit any person to acquire gold from a Federal Reserve bank except to the extent that his license issued hereunder specifically so provides.

ARTICLE V. GOLD FOR OTHER PURPOSES NOT INCONSISTENT WITH THE PURPOSES OF THE GOLD RESERVE ACT OF 1934

SEC. 31. *Licenses required.*—Gold may be acquired and held, transported, melted or treated, imported, exported, or earmarked or held in custody for foreign or domestic account, for purposes other than those specified in articles III and IV not inconsistent with the purposes of the Act only to the extent permitted in article II or under a license issued under section 32, 33, or 34.

SEC. 32. *Gold imported in gold-bearing materials for reexport.*—The United States assay office at New York or the United States mint at San Francisco shall issue licenses on form TGL–16, authorizing the export of gold which such assay office or mint is satisfied was refined (or is equivalent to gold refined) from gold-bearing materials imported into the United States, provided such gold is imported, acquired, and held, transported, melted and treated as permitted in article II or in accordance with a license issued under section 23 hereof and subject to the following provisions:

(1) *Notation upon entry.*—Upon the formal entry into the United States of any gold-bearing materials, the importer shall declare to the collector of customs at the port where the material is formally entered that the importation is made

with the intention of exporting the gold refined therefrom. The collector shall make on the entry a notation to this effect and forward a copy of the entry to the United States assay office at New York or to the United States mint at San Francisco, whichever is designated by the importer.

(2) *Sampling and assaying.*—Promptly upon the receipt of each importation of gold-bearing material at the plant where it is first to be treated, it shall be weighed, sampled, and assayed for the gold content. A reserve commercial sample shall be retained by such plant for at least 1 year from the date of importation, unless the assay is sooner verified by the Treasury Department.

(3) *Plant records.*—The importer shall cause an exact record, covering each importation, to be kept at the plant of first treatment. The records shall show the gross wet weight of the importation, the weight of containers, if any, the net wet weight, the percentage and weight of moisture, the net dry weight, and the gold content shown by the settlement assay. An attested copy of such record shall be filed promptly with the assay office at New York or the mint at San Francisco, whichever has been designated to receive a copy of the entry. The plant records herein required to be kept shall be available for examination by a representative of the Treasury Department for at least 1 year after the date of the disposition of such gold.

(4) *Application for export license.*—Not later than 3 months from the date of entry the importer shall file with the New York assay office or the mint at San Francisco, whichever has been designated to receive a copy of the entry, an application

on Form TG–16 for a permit to export refined gold not in excess of the amount shown by the settlement sheet covering the importation. The application shall be accompanied by two duly attested copies of the settlement sheet.

(5) *Issuance of serial numbered certificates.*—If the mint is satisfied as to the accuracy of the data shown on such application, it shall issue to the importer a dated serial numbered certificate, which shall show the amount of gold specified by the application and the amount specified by the settlement sheet. The Director of the Mint shall prescribe the form of such certificate.

(6) *Issuance of export license.*—Upon delivery of the serial numbered certificate to the assay office at New York or to the mint at San Francisco, whichever has issued the certificate, within 120 days from the date the certificate was issued, the mint shall issue to the applicant an export license on form TGL–16 to export refined gold in an amount not exceeding the amount specified in the settlement sheet as shown on such certificate.

(7) *Exportation prior to receipt of settlement sheet.*—Upon a showing in the application that an exportation with respect to any gold-bearing materials imported into the United States for refining is necessary prior to the time the settlement sheet can be procured, the assay office at New York or the mint at San Francisco, whichever was designated by the importer, may receive the application with duplicate certified copies of the report of the applicant's actual test assay. If prior reports of such applicant have been approximately substantiated by the settlement sheets, a license to export up to

90 percent of the amount of gold which such report estimates will be realized from such gold-bearing materials may be granted.

SEC. 33. *Gold imported for reexport.*—Gold may be imported, transported, and exported without the necessity of holding a license, provided the gold remains under customs custody throughout the period during which it is within the customs limits of the United States. Except as provided in the foregoing sentence, gold may be imported for reexport, held, and transported within the United States under the provisions of this section only under license. The United States assay office at New York or the United States mint at San Francisco may, subject to the following provisions, issue licenses on form TGL–17 authorizing the importation, holding, transportation, and exportation of gold which the office or mint is satisfied is imported for prompt reexport.

(1) *Notation upon entry.*—Upon the formal entry into the United States of gold intended for prompt reexport, the importer shall declare to the collector of customs at the port where the gold is formally entered that it is entered for prompt reexport. The collector shall make a notation of this declaration upon the entry and forward a copy of the entry to the assay office at New York or the mint at San Francisco, whichever is designated by the importer.

(2) *Application for license.*—The importer shall forthwith file an application on form TG–17 with the assay office at New York or the mint at San Francisco, whichever has been designated to receive a copy of the entry.

(3) *License.*—Upon receipt of the application and after making such investigation of the case as it may deem advisable, the assay office or mint to which the application is made, if satisfied that the gold was imported for prompt reexport, shall issue to the applicant a license on form TGL–17.

SEC. 34. The Secretary of the Treasury, with the approval of the President, shall issue licenses authorizing the acquisition, transportation, melting or treating, importing, exporting, or earmarking or holding in custody for foreign or domestic account of gold, for purposes other than those specified in articles III and IV, and sections 32 and 33 of this article, which, in the judgment of the Secretary of the Treasury, are not inconsistent with the purposes of the Act, subject to the following provisions:

(1) *Applications.*—Every application for a license under this section shall be made on form TG–18 and shall be filed in duplicate with the Federal Reserve bank for the district in which the applicant resides or has his principal place of business. Upon receipt of the application and after making such investigation of the case as it may deem advisable, the Federal Reserve bank shall transmit to the Secretary of the Treasury the original of the application, together with any supplemental information it may deem appropriate. The Federal Reserve bank shall retain the duplicate of the application for its records.

(2) *Licenses.*—If the issuance of a license is approved, the Federal Reserve bank which received and transmitted the application will be advised by the Secretary of the Treasury and directed to issue

a license on form TGL–18. If a license is denied, the Federal Reserve bank will be so advised and shall immediately notify the applicant. The decision of the Secretary of the Treasury with respect to the granting or denying of a license shall be final. If a license is granted, the Federal Reserve bank shall thereupon note upon the duplicate of the application therefor, the date of approval and issuance and the amount of gold specified in such license.

(3) *Reports.*—Within 7 days of the disposition of the gold acquired or held under a license issued under this section, or within 7 days of export, if such exportation is authorized, the licensee shall file a report in duplicate on form TGR–18 with the Federal Reserve bank through which the license was issued. Upon receipt of such report, the Federal Reserve bank shall transmit the original thereof to the Secretary of the Treasury and retain the duplicate for its records.

ARTICLE VI. PURCHASE OF GOLD BY MINTS

SEC. 35. The mints, subject to the conditions specified in these regulations, and the general regulations governing the mints, are authorized to purchase:

(*a*) Gold recovered from natural deposits in the United States or any place subject to the jurisdiction thereof, and which shall not have entered into monetary or industrial use;

(*b*) Unmelted scrap gold;

(*c*) Gold imported into the United States after January 30, 1934; and

(*d*) Such other gold as may be authorized from time to time by rulings of the Secretary of the

Treasury: *Provided, however*, That no gold shall be purchased by any mint or assay office under the provisions of this article which, in the opinion of the mint, has been held at any time in noncompliance with the act of March 9, 1933, any Executive orders or orders of the Secretary of the Treasury issued thereunder, or in noncompliance with any regulations prescribed under such orders or licenses issued pursuant thereto or which, in the opinion of the mint, has been acquired and held, transported, melted or treated or held in custody in violation of the Act or of regulations issued thereunder, including these regulations.

SEC. 36. *Deposits.*—Gold in the form of unmelted scrap gold, coins, bars, kings, and buttons will be received in amounts of not less than one troy ounce of fine gold. Gold in the form of retort sponge, lumps, nuggets, grains, and dust, in their native state free from earth and stone, or nearly so, will be received in amounts of not less than two troy ounces of fine gold. Deposits of gold shall not contain less than 200 parts of gold in 1,000 by assay. In the case of gold forwarded to a mint by mail or express, a letter of transmittal shall be sent with each package. When there is a material discrepancy between the actual and invoice weights of a deposit, further action in regard to it will be deferred pending communication with the depositor.

SEC. 37. *Rejection of gold by mint.*—Deposits of gold which do not conform to the requirements of sections 35 or 36, or which otherwise are unsuitable for mint treatment shall be rejected and returned to the person delivering the same at his risk and expense. Any deposit of gold which has been held

at any time in noncompliance with the act of March 9, 1933, any Executive orders or orders of the Secretary of the Treasury issued thereunder, or in noncompliance with any regulations prescribed under such orders or licenses issued pursuant thereto, or in noncompliance with the Act and any regulations issued thereunder, including these regulations, or any licenses issued pursuant thereto or hereto may be held subject to the penalties provided in section 12 hereof, or sections 2 or 3 of said act of March 9, 1933.

SEC. 38. *Gold recovered from natural deposits in the United States or any place subject to the jurisdiction thereof.*—(1) The mints shall not purchase any gold under clause (*a*) of section 35 unless the deposit of such gold is accompanied by a properly executed affidavit as follows:

> An affidavit on form TG–19 shall be filed with each delivery of gold by persons who have recovered such gold by mining or panning in the United States or any place subject to the jurisdiction thereof: *Provided, however,* That such persons delivering gold in the form of nuggets or dust having an aggregate weight of not more than 5 ounces, which they have recovered from mining or panning in the United States or any place subject to the jurisdiction thereof, may accompany such delivery with full and complete information on form TG–19 without the requirement of an oath.
>
> An affidavit on form TG–20 shall be filed with each delivery of gold by persons who have recovered such gold from gold-bearing materials in the regular course of their business of operating a custom mill, smelter, or refinery.

An affidavit on form TG–21 together with a statement also under oath giving (a) the names of the persons from whom gold was purchased; (b) amount and description of each lot of gold purchased; (c) the location of the mine or placer deposit from which each lot was taken; and (d) the period within which such gold was taken from the mine or placer deposit, shall be filed with each such delivery of gold by persons who have purchased such gold directly from the persons who have mined or panned such gold.

In addition such persons shall show that the gold was acquired, held, melted and treated, and transported by them in accordance with a license issued pursuant to section 23 hereof, or that such acquisition, holding, melting and treating, and transportation is permitted under article II without necessity of holding a license.

SEC. 39. *Unmelted scrap gold.*—No deposit of unmelted scrap gold shall be accepted unless accompanied by a properly executed affidavit on form TG–22. In addition the depositors of such gold shall establish to the satisfaction of the mint that the gold was acquired, held, and transported by them in accordance with a license issued pursuant to these regulations.

SEC. 40. *Imported gold.*—The mints are authorized to purchase only such gold imported into the United States as has been in customs custody throughout the period in which it shall have been situated within the customs limits of the continental United States, and then only subject to the following provisions:

(1) *Notation upon entry.*—Upon formal entry into the United States of any gold intended for sale

to a mint under this article, the importer shall declare to the collector of customs at the port of entry where the gold is formally entered that the gold is entered for such sale. The collector shall make a notation of this declaration upon the entry and forward a copy to the mint designated by the importer.

(2) Upon the deposit of the gold with the mint designated by the importer, the importer shall file an affidavit executed in duplicate on form TG–23.

SEC. 41. *Records and reports.*—Every person delivering gold in accordance with this article, who is required to be licensed to hold gold, shall keep an exact record of all gold mined, acquired, and all deliveries of gold made by such person as provided in section 26 hereof and shall file with the mint which issued the license the reports required under section 27 hereof. The mints shall not purchase gold under the provisions of this article from any person who has failed to comply with these regulations or the terms of his license.

SEC. 42. *Purchase price.*—The mints shall pay for all gold purchased by them in accordance with this article $35.00 (less one-fourth of 1 percent) per troy ounce of fine gold, but shall retain from such purchase price an amount equal to all mint charges. This price may be changed by the Secretary of the Treasury without notice other than by notice of such change mailed or telegraphed to the mints.

ARTICLE VII. SALE OF GOLD BY MINTS

SEC. 43. Each mint is authorized to sell gold to persons licensed by it to acquire such gold for use in industry, profession, or art: *Provided, however,*

That no mint may sell gold to any person in an amount which, in the opinion of such mint, exceeds the amount actually required by such licensee for a period of 3 months. Prior to the sale of any gold under this article, the mint shall require the purchaser to execute and file in duplicate an affidavit on form TG–24, or, if such purchaser is in the business of furnishing gold for use in industries, professions, and arts, on form TG–25. The mints are authorized to refuse to sell gold in amounts less than 25 ounces, and shall not sell gold under the provisions of this article to any person who has failed to comply with these regulations or the terms of his license.

SEC. 44. *Sale price.*—The mints shall charge for all gold sold nder this article $35.00 (plus one-fourth of 1 percent) per troy ounce of fine gold. This price may be changed by the Secretary of the Treasury without notice other than by notice of such change mailed or telegraphed to the mints.

ARTICLE VIII. TRANSITORY PROVISIONS

SEC. 45. Licenses issued by the United States mints and assay offices on Form TGL–4 and TGL–4A, shall until March 15, 1934, be deemed licenses under section 23 hereof. Such licenses on Form TGL–4 will authorize the licensee until March 15, 1934, to acquire—

(1) gold held under License TGL–4 or TGL–4A or under License TGL–12, TGL–13, or TGL–14 issued pursuant to these regulations;

(2) unmelted scrap gold from persons who acquired and hold such gold lawfully; or

(3) gold bullion from the mint which issued his licenses;

and to hold, transport, melt, and treat, gold now lawfully held or so acquired in amounts authorized by the license. Such licenses on Form TGL–4A will authorize the licensee until March 15, 1934, to acquire unmelted scrap gold—

(1) held under License TGL–4A or under License TGL–12, issued pursuant to these regulations; or

(2) from persons who acquired and hold unmelted scrap gold lawfully;

and to hold and transport unmelted scrap gold now lawfully held or so acquired in amounts authorized by the license.

SEC. 46. Licenses to hold gold in custody, issued by direction of the Secretary of the Treasury on forms TGL–1 and TGL–2 up to and including March 15, 1934, shall be deemed licenses to hold such gold in custody subject to the conditions prescribed therein, unless sooner terminated by the terms thereof.

HENRY MORGENTHAU, Jr.,
Secretary of the Treasury.

Approved:
FRANKLIN D. ROOSEVELT,
THE WHITE HOUSE.

Articles I, II, III, IV, V, and VIII approved January 30, 1934.

Articles VI and VII approved January 31, 1934.

101244—34——10

PROCLAMATION OF THE PRESIDENT, JANUARY 31, 1934

[FIXING WEIGHT OF GOLD DOLLAR]

WHEREAS, by virtue of section 1 of the act of Congress approved March 14, 1900 (31 Stat. L. 45), the present weight of the gold dollar is fixed at 25.8 grains of gold nine tenths fine; and

WHEREAS, by section 43, title III of the act approved May 12, 1933 (Public, No. 10, 73d Cong.), as amended by section 12 of the Gold Reserve Act of 1934, it is provided in part as follows:

> Whenever the President finds, upon investigation, that (1) the foreign commerce of the United States is adversely affected by reason of the depreciation in the value of the currency of any other government or governments in relation to the present standard value of gold, or (2) action under this section is necessary in order to regulate and maintain the parity of currency issues of the United States, or (3) an economic emergency requires an expansion of credit, or (4) an expansion of credit is necessary to secure by international agreement a stabilization at proper levels of the currencies of various governments, the President is authorized, in his discretion—
>
> (*a*) To direct the Secretary of the Treasury to enter into agreements with the several Federal Reserve banks and with the Federal Reserve Board whereby the Federal Reserve Board will, and it is hereby authorized to, notwithstanding any provisions of law or rules and regulations to the contrary, permit such reserve banks to agree that they will, (1) conduct, pursuant to existing law, throughout specified periods, open market

operations in obligations of the United States Government or corporations in which the United States is the majority stockholder, and (2) purchase directly and hold in portfolio for an agreed period or periods of time Treasury bills or other obligations of the United States Government in an aggregate sum of $3,000,000,000 in addition to those they may then hold, unless prior to the termination of such period or periods the Secretary shall consent to their sale. No suspension of reserve requirements of the Federal Reserve banks, under the terms of section 11 (c) of the Federal Reserve Act, necessitated by reason of operations under this section, shall require the imposition of the graduated tax upon any deficiency in reserves as provided in said section 11 (c). Nor shall it require any automatic increase in the rates of interest or discount charged by any Federal Reserve bank, as otherwise specified in that section. The Federal Reserve Board, with the approval of the Secretary of the Treasury, may require the Federal Reserve banks to take such action as may be necessary, in the judgment of the Board and of the Secretary of the Treasury, to prevent undue credit expansion.

(*b*) If the Secretary, when directed by the President, is unable to secure the assent of the several Federal Reserve banks and the Federal Reserve Board to the agreements authorized in this section, or if operations under the above provisions prove to be inadequate to meet the purposes of this section, or if for any other reason additional measures are required in the judgment of the President to meet such purposes, then the President is authorized—

* * * * *

(2) By proclamation to fix the weight of the gold dollar in grains nine tenths fine and also to fix the weight of the silver dollar in grains nine tenths fine at a definite fixed ratio in relation to the gold dollar at such amounts as he finds necessary from his investigation to stabilize domestic prices or to protect the foreign commerce against the adverse effect of depreciated foreign currencies, and to provide for the unlimited coinage of such gold and silver at the ratio so fixed, or in case the Government of the United States enters into an agreement with any government or governments under the terms of which the ratio between the value of gold and other currency issued by the United States and by any such government or governments is established, the President may fix the weight of the gold dollar in accordance with the ratio so agreed upon, and such gold dollar, the weight of which is so fixed, shall be the standard unit of value, and all forms of money issued or coined by the United States shall be maintained at a parity with this standard and it shall be the duty of the Secretary of the Treasury to maintain such parity, but in no event shall the weight of the gold dollar be fixed so as to reduce its present weight by more than 50 per centum. Nor shall the weight of the gold dollar be fixed in any event at more than 60 per centum of its present weight. The powers of the President specified in this paragraph shall be deemed to be separate, distinct, and continuing powers, and may be exercised by him, from time to time, severally or together, whenever and as the expressed objects of this section in his judgment may require; except that such powers shall expire two years after the date of en-

actment of the Gold Reserve Act of 1934 unless the President shall sooner declare the existing emergency ended, but the President may extend such period for not more than one additional year after such date by proclamation recognizing the continuance of such emergency; and

WHEREAS, I find, upon investigation, that the foreign commerce of the United States is adversely affected by reason of the depreciation in the value of the currencies of other governments in relation to the present standard value of gold, and that an economic emergency requires an expansion of credit; and

WHEREAS, in my judgment, measures additional to those provided by subsection (a) of said section 43 are required to meet the purposes of such section; and

WHEREAS, I find, from my investigation, that, in order to stabilize domestic prices and to protect the foreign commerce against the adverse effect of depreciated foreign currencies, it is necessary to fix the weight of the gold dollar at $15\frac{5}{21}$ grains nine tenths fine,

NOW, THEREFORE, be it known that I, FRANKLIN D. ROOSEVELT, President of the United States, by virtue of the authority vested in me by section 43, title III of said act of May 12, 1933, as amended, and by virtue of all other authority vested in me, do hereby proclaim, order, direct, declare, and fix the weight of the gold dollar to be $15\frac{5}{21}$ grains nine tenths fine, from and after the date and hour of this proclamation. The weight of the silver dollar is not altered or affected in any manner by reason of this proclamation.

This proclamation shall remain in force and effect until and unless repealed or modified by act of Congress or by subsequent proclamation; and notice is hereby given that I reserve the right by virtue of the authority vested in me to alter or modify this proclamation as the interest of the United States may seem to require.

IN WITNESS WHEREOF I have hereunto set my hand and have caused the seal of the United States to be affixed.

DONE in the City of Washington at 3: 10 o'clock in the afternoon, eastern standard time, this 31st day of January, in the year of our Lord one thousand nine hundred and thirty-four, and of the Independence of the United States the one hundred and fifty-eighth.

FRANKLIN D. ROOSEVELT.

By the President:
CORDELL HULL,
Secretary of State.

[No. 2072]

Foreign Laws Relating to the Enforcement of Gold Clauses

(Translations by the Library of Congress)

BELGIUM

Royal Decree of August 2, 1914. Put into effect by the Law of August 4, 1914. (*Sources: Pasinomie Belge*, 1914/15 S. 444/454.)

The National Bank of Belgium is released, until further order, from the obligation to reimburse its bank notes.

The bank notes shall be accepted as legal tender by the public treasuries and private persons, regardless of any stipulation to the contrary.

The present Decree is effective from the date of its publication in the "Moniteur."

Our Minister of Finance is charged with the execution of this Decree.

FRANCE

The Monetary Law Approved June 25, 1928. (Source: Federal Reserve Bulletin, August 1928, Page 570.)

* * * * *

Article 2. The franc, the French monetary unit, shall contain 65.5 milligrams of gold 0.900 fine.

The present definition is not applicable to international payments, which, prior to promulgation of the present law, have been validly stipulated in gold francs.

* * * * *

GERMANY

Proclamation of September 28, 1914, establishing nonliability of certain stipulations in regard to payments. (*Sources: Reichs-Gesetzblatt*, No. 81, p. 417 (1914), Law No. 4502.)

On the authority of Section 3 of the Law authorizing the Federal Council to take economic measures, etc., of August 4, 1914 (*Reichs-Gesetzblatt*, p. 327),[1] the Federal Council issues the following Decree:

SECTION 1. Agreements entered into after July 31, 1914, and establishing payment in gold are not binding until this rule is repealed.

SECTION 2. This Decree takes effect on the date of its promulgation. The Chancellor shall determine when it shall cease to have effect.

NORWAY

Law of December 15, 1923, concerning money obligations stipulated in gold. (*Sources: Norsk Lovtidende*, No. 52, p. 655, December 18, 1923.)

SECTION 1. If the debtor made himself liable under the law to pay a money debt in gold Krons and if the creditor declines to accept payment in the notes of the Norwegian Bank of equal face value, then the debtor is entitled to demand that payment be postponed so long as the bank is freed from the obligation to redeem the notes according to

[1] SECTION 3. The Federal Council is authorized to issue during the time of war, legislative measures deemed necessary for the curing of economic hardships. These measures shall be brought before the Reichstag at its next session, and shall be abolished if the Reichstag votes against them.

their face value. If the creditor withdraws his refusal he can claim payment only after the expiration of a term of three months. For the period of postponement, 4% annual interest shall be paid in bank notes. Only the state, the communities, the Norwegian Bank and the banks entirely guaranteed by the states are entitled to give up in advance the right of postponement.

ROUMANIA

Law of December 21, 1916, establishing a general moratorium. (*Sources: Monitorul Official*, December 23, 1916.)

SECTION 8. A debtor may free himself from any liability which arose prior to August 15, 1916, establishing payment in gold, by payment of the amount due, in bank notes of the Bank of Roumania, or by payment in other Roumanian currency according to the rate of exchange established by law.

SWEDEN

Law of June 17, 1932, concerning payment of certain bonds. (*Sources: Swensk Författningasamling*, p. 370 (June 18, 1934) Law No. 212.)

We, King Gustav . . . announce: That we with the Reksdag ordain as follows:

Bonds issued in this country prior to September 28, 1931, are payable in the notes of the Riksbank even if they are designated as payable in gold.

If a bond is designated as payable either in Swedish or a foreign currency, then only the payment of the stipulated amount in Swedish currency

can be claimed, unless the bond belonged to a foreigner or a Swedish citizen residing abroad on May 20, 1932, or on December 14, 1931, with regard to the bonds, export of which was prohibited on the dates mentioned.

The above provisions concerning the bonds are also applicable to the coupons attached to the bonds.

The law takes effect immediately after the promulgation and will remain in force until the Riksbank is again liable to pay its notes in gold.

U. S. GOVERNMENT PRINTING OFFICE: 1934

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Supreme Court of the United States

OCTOBER TERM, 1934.

No. 270

NORMAN C. NORMAN,

Petitioner,

vs.

THE BALTIMORE AND OHIO RAILROAD COMPANY,

Respondent.

RESPONDENT'S BRIEF

FREDERICK H. WOOD,
Counsel for Respondent.

CARL A. DE GERSDORFF,
Of Counsel.

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Supreme Court of the United States

OCTOBER TERM, 1934.

No. 270

NORMAN C. NORMAN,
Petitioner,

vs.

THE BALTIMORE AND OHIO RAILROAD COMPANY,
Respondent.

RESPONDENT'S BRIEF

STATEMENT

Petitioner is the owner of a bond issued by respondent on February 1, 1930 (R. 6) and purchased by petitioner from respondent on or about said date (Complaint, par. Third, R. 3). By this bond the respondent promised to pay to the bearer One Thousand Dollars at maturity, with interest at 4½% payable semi-annually, payment of principal and interest to be made in a particular kind of money, to-wit: gold coin of the United States of or equal to the then existing standard of weight and fineness (Exhibit to Complaint, R. 6).

On February 1, 1934, petitioner demanded payment of the coupon then maturing, having a face value of $22.50, in gold or its "equivalent" in existing legal tender, claimed to be $38.10[1] (Complaint pars. Seventh, Tenth, R. 4), which

[1]This figure is arrived at by increasing the amount stated to be payable in gold coin of the weight and fineness existing on February 1, 1930, in inverse ratio to the reduction of the weight of the gold dollar accomplished by the Presidential Proclamation, dated January 31, 1934, made pursuant to the Gold Reserve Act of 1934, c. 6, 48 Stat. 337, Appendix, p. 40 (Complaint, pars. Fifth, Ninth, Tenth, R. 4).

payment was refused, but tender made of the face amount of said coupon in then existing legal tender (Complaint, par. Eighth, R. 4; Answer, par. Third, R. 10).

Petitioner thereupon sued respondent in the Supreme Court of New York County and demanded judgment, *inter alia*, for the sum of $22.50 in gold coin of the United States, of the standard of weight and fineness existing on February 1, 1930, or for the equivalent thereof in legal tender, claimed to be $38.10 (Complaint, Prayer, pars. 4 and 5, R. 5). The respondent in its answer set up as an affirmative defense various acts of Congress, the executive orders made thereunder, and Public Resolution No. 10 of the Seventy-third Congress, whereby the respondent was prevented and prohibited from paying either principal or interest "otherwise than dollar for dollar" in coin or currency of the United States, legal tender at the time of payment, and was authorized and required so to pay them (R. 9-10). Petitioner moved to strike out the affirmative defense upon the ground that the Resolution, acts, and orders set up in the answer, in so far as applicable, were unconstitutional, and for judgment on the pleadings (R. 2). Upon the argument of this motion, it was stipulated that the defendant should be deemed to have made a cross-motion for judgment on the pleadings (R. 11). The court, without opinion, denied petitioner's motion to strike out the respondent's affirmative defense, and entered judgment in favor of petitioner for $22.50, the face amount of the coupon sued on.[2] Since the petitioner was admittedly entitled to recover that amount, the judgment, while nominally in favor of the petitioner, was in fact in favor of the respondent.

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[2]While no opinion was rendered, the trial court's order for judgment recites that the court is of the opinion that Public Resolution No. 10 "is valid under the Constitution of the United States" (R. 11-12).

The Appellate Division and the Court of Appeals successively affirmed. The Appellate Division wrote no opinion. The opinion of the Court of Appeals (R. 20-22, per Pound, *Ch. J.*; O'Brien, *J.* dissenting without opinion, R. 23) holds that Public Resolution No. 10 is valid and applicable and requires the judgment which was rendered. "The point for decision in this case", said the Court of Appeals, "depends upon the constitutionality of the joint resolution of Congress known as Public Resolution No. 10 * * * as related to the standard gold clause contained in a corporate bond issued by defendant * * *" (R. 20). The opinion holds that the Resolution is within the power of the Congress and that its application in this action does not violate the constitutional rights of the plaintiff.

This Court granted a writ of certiorari, 293 U. S.

THE STATUTE INVOLVED

The petitioner challenges the constitutional validity of the Joint Resolution of the Congress of June 5, 1933.[3] This Resolution, after declaring that

> "* * * the existing emergency has disclosed that provisions of obligations which purport to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States

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[3]Public Resolution No. 10, approved by the President June 5, 1933 (48 Stat. 112). A Joint Resolution of Congress, when approved by the President, has all the force and effect of an Act of Congress (6 *Opinions of the Attorney General* 680 (1854), 14 *Diamond Rings* v. *United States*, 183 U. S. 176 (1901), *Levey* v. *Stockslager*, 129 U. S. 470 (1888)). An appendix containing the statutes, proclamations, executive orders and regulations having a bearing is printed as a separate document and filed herewith.

> measured thereby, obstruct the power of the Congress to regulate the value of the money of the United States, and are inconsistent with the declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in the payment of debts. * * *"

then provides:

> "That (a) every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts.
>
> * * * * * *
>
> "(b) As used in this resolution, the term 'obligation' means an obligation (including every obligation of and to the United States, excepting currency) payable in money of the United States; and the term 'coin or currency' means coin or currency of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations."

By Section 2 of the Resolution all coins and currencies of the United States as defined in § 1 (b), theretofore or

thereafter issued, are declared to be legal tender for the payment of all debts, public and private.

The full text of the Resolution is set out in the margin.[4]

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[4] "JOINT RESOLUTION

To Assure Uniform Value to the Coins and Currencies of the United States.

Whereas the holding of or dealing in gold affect the public interest, and are therefore subject to proper regulation and restriction; and

Whereas the existing emergency has disclosed that provisions of obligations which purport to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby, obstruct the power of the Congress to regulate the value of the money of the United States, and are inconsistent with the declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in the payment of debts. Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. Any such provision contained in any law authorizing obligations to be issued by or under authority of the United States, is hereby repealed, but the repeal of any such provision shall not invalidate any other provision or authority contained in such law.

(b) As used in this resolution, the term 'obligation' means an obligation (including every obligation of and to the United States, excepting currency) payable in money of the United States; and the term 'coin or currency' means coin or currency of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations.

Sec. 2. The last sentence of paragraph (1) of subsection (b) of section 43 of the Act entitled 'An Act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency to provide emergency relief with respect to

THE LEGISLATIVE HISTORY OF THE RESOLUTION —THE CONDITIONS EXISTING AT THE TIME OF ITS ADOPTION—AND ITS RELATION TO THE SUBSEQUENT BASIC CHANGE IN OUR MONETARY SYSTEM.

1. The conditions existing at the opening of the Seventy-third Congress.

Within the months immediately preceding the opening of the Seventy-third Congress there had been a great and growing increase in bank failures. Many other banks, including many which were solvent, as well as others which were not, were upon the verge of closing. Business was prostrate. Domestic prices were falling with rapidity. Panic psychology existed throughout the land. The national income had shrunk to an amazing extent, with proportionate and disastrous increase in the debt burden of the nation. Our foreign trade was stagnant, due, in no small measure, to the depreciation of foreign currencies in terms of gold, which had resulted in placing our own currency at a premium over foreign currencies and hence in making it more expensive for citizens in foreign countries, using such depreciated currencies, to buy American goods. Confidence

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agricultural indebtedness, to provide for the orderly liquidation or joint-stock land banks, and for other purposes', approved May 12, 1933, is amended to read as follows:

> 'All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations) heretofore or hereafter coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues, except that gold coins, when below the standard weight and limit of tolerance provided by law for the single piece, shall be legal tender only at valuation in proportion to their actual weight.' "

in the monetary and financial systems of the country had been shaken. Gold in large quantities was going into hiding or in flight to foreign countries.

These are facts of common knowledge of which the Court will take judicial notice (*Atchison, etc. Ry. Co.* v. *United States,* 284 U. S. 248, 260). They are established, moreover, by the statistical publications of Departments of the Government, and by the provisions and recitals of the several statutes, proclamations, executive orders and regulations which deal with the monetary measures of the Federal Government since March 4, 1933.

2. The acts and executive orders enacted or issued prior to the adoption of the Resolution.

On March 6, 1933, the President, pursuant to authority conferred by the War-Time Act of October 6, 1917 (c. 106, § 5, 40 Stat. 415, as amended by the Act of Sept. 24, 1918, c. 176, § 5, 40 Stat. 966; Appendix, p. 1,) closed all the banks. (Presidential Proclamation, March 6, 1933, Appendix, p. 2). By the same Proclamation, and pursuant to the same authority, the President prohibited any banking institution from paying out, exporting, earmarking, or permitting the withdrawal or transfer in any manner or by any device whatsoever of any gold or silver coin or bullion or currency. On the same day the Secretary of the Treasury, with the approval of the President, directed the Treasurer of the United States and the Director of the Mint, during the continuance of the bank holiday, to pay out gold in any form only under license issued by the Secretary of the Treasury (Appendix, pp. 5, 6). Specie payment was thus suspended.

The National Banking Emergency Relief Act of March 9, 1933 (48 Stat. 1, Appendix, p. 7), approved and confirmed the action theretofore taken by the President and the Secretary of the Treasury as above stated (§ 1), empowered the President to regulate or prohibit transactions in foreign exchange, transfers of credit by banking institutions, and the exporting, hoarding, melting or earmarking of gold or silver coin or bullion or currency (§ 2), and empowered the Secretary of the Treasury, within his discretion, to require delivery to the United States of all gold coin, gold bullion and gold certificates by whomsoever owned, upon payment of "an equivalent amount of any other form of coin or currency coined or issued under the laws of the United States" (§ 3). Under authority of this Act, and on the date of its enactment, a further Presidential Proclamation continued in force, until further Proclamation, the restrictions imposed by the Proclamation of March 6, 1933 and by regulations and orders promulgated thereunder. (Presidential Proclamation of March 9, 1933. Appendix, p. 10). The suspension of specie payment effected by the Proclamation of March 6, 1933 was thus continued in effect, and has not yet been removed.

By Executive Order of March 10, 1933 (Appendix, p. 12) the President authorized the conditional reopening of banks, but forbade the exportation of gold, gold coin or gold certificates,[5] and likewise forbade any banking institution, which might be reopened under the authority conferred upon the Secretary of the Treasury by the same Executive Order, to pay out any gold coin, gold bullion, or gold certificates, except as authorized by the Secretary.

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[5]By subsequent Order of April 20 further and more detailed regulations were promulgated relating to foreign exchange transactions and the exportation of gold. (Appendix, p. 18.)

By the Executive Order of April 5, 1933, (Appendix, p. 14) all persons were required to deliver, with limited exceptions not here material, all gold coin and gold certificates in excess of $100 per person, to the Federal Reserve system, unless licensed to hold gold coin for proper transactions, not involving hoarding.[6]

Between the opening of Congress on March 4, 1933 and its adjournment on June 16, 1933, numerous bills were introduced into both houses of Congress for inflation of the currency, either through the free coinage of silver or the issue of paper money. None of these bills was enacted into law. But on May 12, 1933, by the Thomas Amendment to the Agricultural Adjustment Act (c. 25, § 43, 48 Stat. 51-53; Appendix, p. 22) the President was empowered (a) to cause additional paper money to be issued in any amount not exceeding Three Billion Dollars; (b) to provide for the free and unlimited coinage of silver at such ratio in relation to gold as might be determined by him; and (c) to reduce the gold content of the gold dollar to any extent not less than 50% of its existing content.[7]

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[6]On April 28, 1933 (Appendix, p. 21) the Secretary of the Treasury issued instructions to all Governors of Federal Reserve Banks that the Secretary of the Treasury would grant no license for the acquisition of gold coin for the purpose of meeting maturing obligations for payment in gold coin, with limited exceptions not here material.

[7]The statute required that action by the President thereunder be predicated upon his finding: "that (1) the foreign commerce of the United States is adversely affected by reason of the depreciation in value of the currency of any other government or governments in relation to the present standard value of gold, or (2) action under this section is necessary in order to regulate and maintain the parity of currency issues of the United States, or (3) an economic emergency requires an expansion of credit, or (4) an expansion of credit is necessary to secure by international agreement a stabilization at proper levels of the currencies of various governments." This statute also provided that all coins and currency theretofore or thereafter coined or issued by or under the authority of the United States should be legal tender for all debts, public or private.

3. The situation as it existed at the time of the adoption of the Resolution.

The Resolution was adopted June 5, 1933. At that time the President had not exercised any of the powers conferred by the Thomas Amendment. It was uncertain whether any of such powers would ever be exercised. There were many who hoped and believed that their exercise would be found to be unnecessary, and that in the course of time existing restrictions upon the exportation and use of gold coin could be removed, and the monetary system and national currency restored to normal.

Congress was about to recess. Gold coin had not been retired wholly from circulation, although by reason of the restrictions upon its use its circulation was limited. Its exportation had been prohibited and measures had been taken to prevent domestic hoarding in quantities. These restrictions rested on Executive Orders. Congress itself had not at the time deemed it wise by direct action either to retire gold coin from circulation or to prohibit its exportation or hoarding by law. The purpose of the powers conferred upon the President, and the executive action taken thereunder, was to prevent gold coin from going to a premium and thus to preserve the integrity of the national currency and insure stability. Within a single month prior to the opening of the Seventy-third Congress in March, 1933, $624,000,000 in gold had been withdrawn from the Federal Reserve banks and the Treasury, of which $406,000,000 had been exported or ear-marked for foreign account, and $165,000,000 domestically hoarded (Federal Reserve Bulletin, April 1933, p. 215). History taught that the hoarding and flight of gold, unless checked, inevitably resulted in sending gold coin to a premium, thus destroying the

parity between the several forms of currency in existence or use, without which the integrity of no monetary system may be maintained. The flight and hoarding of gold had been arrested by the measures taken. Danger of their recurrence still remained and was an obvious obstacle to the restoration of a normal monetary condition by the removal or relaxation of the restrictions imposed. Moreover, the threat of inflation contained in the Thomas Amendment was in itself an incentive to the hoarding and exportation of gold, if existing restrictions were removed, and thus threatened the continued maintenance of the parity between the several forms of currency then in existence. The time was appropriate for the adoption of additional measures to maintain such parity.

Public Resolution No. 10 was such a measure, appropriate for such purpose, whether the powers conferred by the Thomas Amendment were ever exercised or not. There were then outstanding not less than $75,000,000,000 of private obligations containing a gold clause, and not less than $25,000,000 of public obligations.[7a] At an assumed average interest rate of 5%, the annual interest charges on the former aggregate $3,750,000,000, and at an assumed average interest rate of 4% on the latter, $1,000,000,000, or a total of $4,750,000,000. This amount alone exceeded the existing supply of gold in the United States. These figures do not include the principal amount of such obligations presently to mature. Under the gold clause the

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[7a]So estimated by Congressman Steagall, Chairman of the Committee on Banking and Currency, which reported the Bill to the House. 77 Cong. Rec., Part V, p. 4531. Congressman Luce, who presented the minority views of the Committee, stated that the amount was $100,000,000,000, exclusive of Government securities. *Id.* p. 4534. Other estimates within the same range were made by other members of Congress. *Id.* pp. 4520, 4523, 4526, 4536, 4545, 4905.

holders of these bonds were entitled to demand payment in gold coin of the then existing weight and fineness. The potential concerted demand for such enormous amounts of gold coin by reason of these clauses, if made, was not only such as to unsettle the whole monetary system (irrespective of any change therein), but to accelerate and intensify the tendency, already present, to hoard gold, and hence to send gold coin to a premium, destroying the parity between the several forms of currency in existence.

In adopting the Resolution Congress also had in mind the situation as it would be affected by the possible exercise by the President of the powers conferred by the Thomas Amendment. In anticipation of such action as the President might take, it was appropriate for Congress to adopt the resolution, both as a parity measure and for the purpose of protecting the integrity of such new monetary system as might result from executive action, as well as to safeguard the continued parity of the then existing currency in the event that the powers under the Thomas Amendment should not be exercised.

4. The acts and executive orders enacted or issued subsequent to the adoption of Public Resolution No. 10.

By order of the Secretary of the Treasury, approved by the President on December 28, 1933 (Appendix, p. 34), all gold coin, gold certificates and gold bullion were required to be paid over or delivered to the United States upon payment therefor in other forms of coin or currency.*

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*By Order of the Secretary of the Treasury, approved by the President on January 15, 1934, midnight of January 17, 1934 was fixed as the expiration of the period during which such delivery should be made.

The Gold Reserve Act of January 30, 1934 (48 Stat.; Appendix, p. 40), ratified, approved and confirmed all previous executive action taken by the President and the Secretary of the Treasury under the Act of March 9, 1933 (§ 13); vested title in the United States to all gold or gold coin held by the Federal Reserve Boards, Banks or Agents (§ 2); continued the power of the President to reduce the gold content of the gold dollar, requiring, however, that if such power were exercised the content should be fixed at between 50% and 60% of the then existing content (§ 12); and provided that no gold should thereafter be coined; that no gold should thereafter be paid out or delivered by the United States; that all gold coin of the United States should be withdrawn from circulation (§ 5); and that no currency of the United States should be redeemed in gold, with exceptions not here material (§ 6).

By Proclamation of the President of January 31, 1934 (Appendix, p. 56), the power so conferred was exercised by reduction in the gold content of the gold dollar to 15 5/21sts grains 9/10ths fine, or to approximately 60% of its prior content. This proclamation was predicated upon the making of findings of fact in conformity with the Act of May 12, 1933, whereby the standards of Executive action, if taken, were prescribed.

The monetary legislation of the Seventy-third Congress thus took final and complete form with the enactment of the Gold Reserve Act.

5. The effect of the monetary legislation, considered as a whole, and the relation of the Resolution thereto.

The effect of the monetary legislation, considered as a whole, was:

(1) to retire gold coin and gold certificates from circulation and prohibit their use as money in all domestic transactions,

(2) to establish a national currency to consist of coin (other than gold coin), silver certificates, Federal Reserve, Federal Reserve Bank, National Bank, United States and Treasury notes, based on a gold-bullion standard, under which the dollar, although irredeemable in gold for domestic purposes, should have an assigned bullion weight, for purposes of international settlement, of approximately 60% of the bullion weight of the gold coin retired,

(3) to make said national currency legal tender for the payment of all debts, public and private, and of equal value in the discharge of all obligations payable in money, whether for the payment of debts, the purchase of goods or the performance of services, irrespective of the date when such obligations were incurred, or of the contemplation of the parties at the time as to the kind of money in which the same were to be discharged, and

(4) to prevent the circumvention or obstruction of the accomplishment of such purposes through the operation of any contract theretofore or thereafter made purporting to give to the obligee the right to require the discharge of an obligation, payable in money, in any manner except dollar for dollar in such legal tender.

By this legislation the Congress made a basic change in the monetary system of the country. The wisdom and expediency of making such change was for the Congress.

THE QUESTION PRESENTED

The question presented in this case, formally stated, is whether the Court of Appeals of the State of New York was right or wrong in ruling that the Resolution is a valid exercise of the constitutional power of the United States, and that, as here applied, it does not do violence to any right, title, privilege or immunity of the plaintiff safeguarded to him by the Constitution of the United States.

The real question, we believe, is whether the Congress has any effective power to give to this Nation a uniform and stable monetary system and a currency suited to its needs, and to regulate and maintain the values of the monies of the United States; or whether private persons may usurp or obstruct these functions by contracts containing standard provisions drafted with "prophetic discernment" to forestall the exercise of the National power, and, on the plea of arbitrary interference with private rights of property and of contract, render ineffective and futile the exercise by Congress of the powers over the monetary system and the currency entrusted to it by the Constitution.

SUMMARY OF ARGUMENT

I. The bond involved in this action is "an obligation payable in money of the United States" within the meaning of the Resolution.

II. The gold clause in the bond in suit is a "gold coin", not a "gold value" clause, but is equally within the Resolution, whether interpreted as one or the other.

III. Sources of the monetary power of the Congress.

1. The Congress has an authority with respect to the national monetary system and the currency not

confined by the limitations of any one specific grant in the Constitution. The exertion of this authority may be supported by the "resulting" or "composite" powers arising through the combination or aggregation of any or all of the specific grants of power.

IV. The character and scope of the powers of the Congress over the monetary system and the currency.

1. The sovereign character of the national government as established by the Constitution, must be given weight in determining the scope of the powers granted to it over the monetary system and the currency.

2. Congress is empowered to provide the People with a national monetary system and a national currency suitable to their needs, and to secure to them the full and unimpaired benefits thereof through the adoption of any measures appropriate either to the accomplishment of such purpose or for the removal of obstructions thereto.

3. In the exercise of its power over the monetary system and the currency, the Congress is empowered to declare of what the currency shall consist, to give every unit and description thereof the character and qualities of money having a defined legal value, irrespective of the intrinsic value of the substances out of which made, to regulate the value of such money and to make every unit and description thereof legal tender at its face value for the discharge of all money obligations, public or private, whether previously existing or subsequently incurred.

4. The power of the Congress over the monetary system and the currency and to determine of what money shall consist includes the power to regulate its volume, to enhance or debase its value, to "decry" or withdraw from circulation existing forms of money, and to provide new forms of money and require their acceptance as a full substitute at equal tender value with those forms of money for which it is substituted.

5. The power to regulate the value of money authorizes the Congress to control the use of money as a standard of value, as well as to regulate its value as a medium of exchange.

6. The power to determine of what money shall consist and to regulate the value thereof, includes the power to determine and regulate the value of the several units of the currency in terms of each other and to prohibit the attempted use of one kind of money as a commodity for the purpose of realizing in another kind of money a value greater than the stated value of the first.

7. As in respect of all other powers, the power conferred includes the power to preserve and protect its exercise for the accomplishment of the objects embraced therein and to remove any and all obstructions thereto by the adoption of any appropriate means, notwithstanding any resulting interference with private rights of property or contract.

   (A) The comprehensiveness of this power to preserve that which Congress has created and

to prevent obstruction of or interference with its unimpaired usefulness for the accomplishment of the purposes for which created is evidenced by the previous decisions of this Court arising under the power of Congress over the monetary system and currency.

(B) The comprehensiveness of this power is also evidenced by the decisions of this Court in respect of the related power of the Federal Government to create national banks.

(C) The extent of this power is forcefully illustrated by the decisions arising under the Commerce Clause, one of the clauses upon which the power of Congress over the monetary system and currency is based.

V. The Resolution was both (1) an affirmative exercise of the powers of the Congress over the monetary system and the currency and to regulate the value of money, and (2) a measure both appropriate and necessary to preserve the same and to remove an obvious obstacle to their exercise.

1. Private individuals may not by prophetic discernment, through contracts previously entered into, any more than by contracts subsequently made, limit or obstruct the exercise by the Congress of its powers.

2. By prophetic discernment, private individuals have attempted to withdraw billions of dollars of obli-

gations payable in lawful money of the United States from the exercise by the Congress of its power over the monetary system and the currency and to regulate the value of money.

3. If by prophetic discernment individuals may limit the monetary powers of Congress through the making of pre-existing contracts, they are equally possessed of the power to render nugatory the prohibition which the Resolution contains against the insertion of similar clauses in subsequent contracts and hence to withdraw entirely from the Congressional field all legal tender powers of Congress and its power to regulate the value of money.

4. Gold clause obligations, at all times a latent threat to the stability of the monetary system and currency, had, at the time of the adoption of the Resolution, become an obvious obstacle to the restoration and maintenance of a stable monetary system and currency, which it was within the power of the Congress to remove both to meet the then existing situation and to prevent its recurrence.

5. The Resolution was (1) an affirmative exercise of the power of the Congress to provide the Nation with a monetary system and currency believed by it to be suitable to the needs of the people and their commerce, and (2) of the power to remove an obvious obstruction or obstacle to the exercise of this power.

6. Gold clause obligations constituted an obstruction to the adjustment of the value of the dollar in the interest of our foreign commerce.

7. In the last analysis, those who challenge the validity of the Resolution would deny to the Congress the choice of means by which to effect such change in the monetary system as was believed by it to be required by the needs of the people and their commerce, both foreign and domestic.

8. As related to the subsequent devaluation of the dollar, the Resolution was a valid exercise of all of the powers of the Congress over the monetary system and the currency, hereinbefore reviewed.

VI. The Resolution as here applied does not violate any right, title, privilege or immunity safeguarded to the petitioner by the Federal Constitution.

1. The contract impairment clause, the equal protection clause, and the just compensation clause, have no bearing whatever on the case at bar.

2. The Resolution, being a means appropriate to the exercise of a power conferred upon the Congress, and uniform in its application, is not an arbitrary, capricious or discriminatory interference with private rights of contract or property, and its application here, therefore, does not violate the due process clause of the Fifth Amendment.

ARGUMENT

I

THE BOND INVOLVED IN THIS ACTION IS "AN OBLIGATION PAYABLE IN MONEY OF THE UNITED STATES" WITHIN THE MEANING OF THE RESOLUTION.

The Resolution extends to any "obligation * * * payable in money of the United States * * *." The pertinent provisions of the bond in respect of the payment of principal and interest (R. 6) are as follows:

"United States of America

$1000		$1000

THE BALTIMORE AND OHIO RAILROAD COMPANY

No. 14569	THIRTY-YEAR 4½% CONVERTIBLE GOLD BOND DUE February 1, 1960	No. 14569

"THE BALTIMORE AND OHIO RAILROAD COMPANY, a corporation of the State of Maryland (hereinafter called the Company), for value received, hereby promises to pay to the bearer, or, if this bond be registered, to the registered owner hereof, on February 1, 1960, the sum of ONE THOUSAND DOLLARS, and to pay interest on said sum from February 1, 1930, until the same shall be paid, at the rate of four and one-half per cent. (4½%) per annum, semi-annually on February 1 and August 1 in each

> year, upon presentation and surrender of the interest coupons hereto annexed as they shall severally mature. Payment of the principal of and interest on this bond will be made at the office or agency of the Company in the Borough of Manhattan, The City of New York, in gold coin of the United States of America of or equal to the standard of weight and fineness existing on February 1, 1930."

The obligation is clearly one for the payment of money and not for the delivery of a specified number of grains or ounces of gold. In the first sentence the obligor agrees to pay the sum of "ONE THOUSAND DOLLARS" with interest thereon. This is an obligation payable in money of the United States. It is no less so because, in the second sentence, it is provided that payment will be made in a particular kind of money. *Trebilcock* v. *Wilson*, 12 Wall. 687 (1871); *Thompson* v. *Butler*, 95 U. S. 694 (1877).

If the bond were a "commodity contract", the defendant could discharge its obligation by tender of bullion. But the terms of this bond specify payment in money only,—money capable of being banked and used by the obligee as a medium of exchange. The parties so provided and so intended. A tender of bullion, or of any other commodity, no matter how great its value, would not discharge the obligation without a waiver of rights by the obligee.

Moreover the contract was at its very inception a "money" contract, the subject matter of which was lawful money of the United States loaned to the respondent upon the issue of the bond and to be repaid in money at its maturity.

II

THE GOLD CLAUSE IN THE BOND IN SUIT IS A "GOLD COIN", NOT A "GOLD VALUE" CLAUSE,[1] BUT IS EQUALLY WITHIN THE RESOLUTION WHETHER INTERPRETED AS THE ONE OR THE OTHER.

The bond is likewise within the Resolution whether interpreted as a contract for payment in a particular kind of money, *i.e.*, one defining the mode of payment, or as one prescribing the measure of payment. The Resolution in terms applies not only to obligations requiring payment in a particular kind of money, but also to obligations requiring payment "in an amount of money of the United States measured thereby".

In either event, the Resolution is clearly constitutional, as will be hereinafter demonstrated.

Since, however, the petitioner predicates his entire constitutional argument on one interpretation of the clause only, it is pertinent briefly to consider its proper interpretation. Petitioner contends that it is a "gold value" clause, which implies a payment in the "equivalent" of gold in the event performance by payment in gold coin is impossible, *i.e.*, that the instrument should be interpreted as if written in substance as follows:

> "The Baltimore and Ohio Railroad Company promises to pay to the bearer on February 1, 1960, the sum of One Thousand Dollars in gold coin of the United States of America of or equal to the standard of weight and fineness existing on February 1, 1930, if that be possible, but if impossible, then to pay the number of dollars of any other form of

[1]By a "gold coin" clause is meant one prescribing a mode of payment,—payment in a particular kind of money, without more. A "gold value" clause purports to set up a measure of payment.

> money then current which will buy the number of grains of gold contained in $1000 of gold coin of said weight and fineness, and in like manner to pay interest on said sum annually from the date hereof at 4½% per annum."

An instrument so framed or interpreted is not one for the payment of a sum certain in money, but one for the payment of an indeterminate sum ascertainable only at date of payment, and is not negotiable. (Negotiable Instruments Law of New York, Art. 3, Section 20(2); Laws of Maryland, 1898, Ch. 119, Section 20(2); Uniform Negotiable Instruments Law, Article I, § 1 (2)). The parties clearly intended that the obligee could require payment of the number of dollars stipulated in gold coin of the specified weight and fineness. They also intended, however, that the instrument should be negotiable.[2] Like substantially all other bonds issued in this country containing a gold clause, these were bearer bonds, intended to pass from hand to hand and to be negotiable. That this particular series of bonds was so intended is further evidenced by the bond itself, which provides that registration of the bond "shall not affect the negotiability of the coupons appertaining" thereto "which shall continue to be transferable by delivery" (R. 8). No interpretation should be placed upon the bond which would render it non-negotiable, contrary to the intent of the parties.

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[2]Section 6(5) of Article I of the Uniform Negotiable Instruments Law provides that the validity and negotiable character of an instrument are not affected by the fact that it designates a particular kind of current money in which payment is to be made. Hence, if the gold clause is construed to require payment of a specified number of dollars in gold coin, as we maintain, the bonds would be negotiable (*Chrysler* v. *Renois*, 43 N. Y. 209). In this connection it is interesting to note that the New York Stock Exchange has refused to list bonds containing the words "or the equivalent thereof" after the standard gold clause. (See Post and Willard, The Power of Congress to Nullify Gold Clauses, 46 Harv. L. Rev. 1225, Note 1.)

Moreover the instrument is unambiguous on its face. In the first sentence the obligor agrees to pay a specified sum, $1,000, with interest thereon.[3] The second sentence of the obligation requires the obligor to pay in a particular kind of money, *i.e.*, "in gold coin of the United States of or equal to the weight and fineness existing on February 1, 1930". The contract thus on its face is a gold coin contract. That it is such and not a "gold value" contract is further supported by the interpretation hitherto given to similar contracts by this Court, which has held that they are dischargeable only in the coin specified and not in that amount of other money which at the time of payment will buy such coin. *Bronson* v. *Rhodes*, 7 Wall. 229; *Trebilcock* v. *Wilson*, 12 Wall. 687; *The Emily Souder*, 17 Wall. 666; *Butler* v. *Horwitz*, 7 Wall. 258; *Dewing* v. *Sears*, 11 Wall. 379.[4]

Concededly it was the intention of the parties to guard against inflation. But not only the language of the contract but the history of gold clauses in this country (and gold clauses are peculiarly an American institution) make

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[3]Such an obligation is dischargeable in any form of legal tender current at the time of payment, at the option of the obligor. *Legal Tender Cases*, 12 Wall. 457; *Juilliard* v. *Greenman*, 110 U. S. 421; *Maryland* v. *Baltimore and Ohio Railroad Co.*, 22 Wall. 105; *Woodruff* v. *Mississippi*, 162 U. S. 291.

[4]In each of the three cases first cited, this Court held (there being no such statute as Public Resolution No. 10 in effect) that a judgment rendered on a contract payable, in terms, in coin or in specie, could not, over the objection of the obligee, be rendered in anything but coin or specie. The two cases last cited are especially significant. The *Dewing* case involved a contract whereby the obligor promised to pay a certain number of ounces or grains of gold in coined money; the *Horwitz* case, an obligation to pay in foreign coin "and other gold and silver at their present established weight * * * ". In each case the obligee was willing to accept a judgment in paper currency, but the *obligor objected* to the rendition of such a judgment. In each case this Court held it reversible error to enter a judgment in paper currency.

it plain that it was determined to guard against inflation in a particular way which had always been successful in the past—by stipulating for payment in gold coin.[5] Apparently the parties never adverted to the possibility that the obligor could not be compelled in a suit brought upon the instrument to discharge the obligation in gold coin of the specified weight and fineness.[6]

Petitioner has cited no decided case which, in our judgment, supports any interpretation of the gold clause in the bond sued on contrary to that which we attribute to it. In *The Vaughan & Telegraph*, 14 Wall. 258, cited at page 14 of petitioner's brief, no gold clause was involved. In *Gregory* v. *Morris*, 96 U. S. 619, cited at the same page of petitioner's brief, although a gold clause was incidentally involved, the suit was not brought upon it or to enforce it. The case involved an action by an individual from whom cattle securing an instrument containing a gold clause had been wrongfully replevied, and presented the question of the mode of calculating "damages" for the wrongful replevin under Wyoming law. As stated by this Court (96 U. S., at 624):

> "* * * the suit is not upon the contract for the recovery of the amount agreed to be paid, but, in effect, for damages on account of the wrongful detention of property mortgaged to secure the debt".

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[5]Clearly the employment of the words "gold coin * * * of or equal to the standard of weight and fineness existing on February 1, 1930", does not indicate that the parties intended that the obligor would be able to demand a larger number of dollars in paper or silver currency. The words "equal to" are really synonymous with "of". Reading the language as the parties wrote it, it would seem that the parties were making allowance for an increase in the alloy of gold coin while retaining the same gold content. (See Nebolsine, Gold Clauses in Private Contracts, 42 Yale Law Journal, 1051, 1077-1079.)

[6]Gold coin had never been withdrawn from circulation in this country by governmental act until the recent monetary legislation.

The recent decision of the House of Lords in *Feist* v. *Societe Intercommunale Belge d'Electricite*, cited at page 20 of petitioner's brief is likewise not in point. The *Feist* case involved the construction[7] of bonds issued by a foreign company in 1928 and sold in London, payable, in terms, in the sum of £100 "in Sterling, in gold coin of the United Kingdom of or equal to the standard of weight and fineness existing on September 1, 1928". The House of Lords, in reversing the unanimous judgment of the Court of Appeal, as well as that of the Chancery Divison, virtually conceded that there was no real ambiguity on the face of the contract[8] but found a latent ambiguity in the circumstances existing at the date of its execution, and, on the basis thereof, held that, gold coin having been withdrawn from circulation, the bondholders were entitled to recover the number of pounds in paper currency which on the date of payment of principal and interest would buy the number of grains of gold contained in the gold coin specified. The circumstances existing at the date of execution of the gold clause contract before the House of Lords, by virtue of which that court found a latent ambiguity, clearly distinguish the case from this case. At the date when the Belgian bonds were issued Great Britain, although having resumed the Gold Standard three years before, was no longer redeeming currency in gold, and gold coin was substantially no longer in circulation. For this reason the

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[7]No question of governmental power was involved. There was no legislation similar to Public Resolution No. 10 in force in the United Kingdom, since gold clauses are not a common phenomenon in the United Kingdom, their use there being confined almost exclusively to international obligations. (See *Nussbaum La Clause-Or dans les Contracts Internationaux, in Recueil des Cours, 1933*, pp. 567, 570.)

[8]Lord Russell said: "I am conscious, my Lords, that this construction strains the words of the document * * *."

court inferred that the gold clause was inserted "in contemplation of the contingency of this country going (as it did in 1931) off the Gold Standard at some future date", and that "neither party to the bond can have contemplated payment under the bond being actually made in gold coins". Thus the primary[9] circumstances on which the court relied to find a latent ambiguity in the *Feist* case are not present in this case and the decision therein cannot be deemed to be apposite herein.

The decisions of the Permanent Court of International Justice at The Hague in the case of the *Brazilian Loans* (P. C. I. J., Series A, No. 20), referred to at page 20 of petitioner's brief, as well as the case of the *Serbian Loans* (*Ibid* 21), not referred to therein, are even more clearly distinguishable than the *Feist* case, *supra*. The Serbian and Brazilian bonds were payable in various countries in "gold francs" ("francs d'or"), but the franc of no particular country was specified. It was therefore perfectly obvious that the contracts in question were "gold value" contracts.

For the reasons assigned in the foregoing discussion, it is our view that the bond sued on, like all standand American gold clause obligations, is a "gold coin" contract. We repeat that the Resolution is constitutional, however, whether the gold clause in the bond in suit prescribes a mode or a measure of payment.

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[9]The Court also noted that there were no English gold coins of the denominations required to pay portions of the interest on the bonds sued on. This argument was obviously a make-weight. It cannot be made herein because there were gold coins in circulation at the date of the bond sued on in denominations which exactly fitted the interest payments. But, in any event, if there were not, that would be *de minimus*.

III

SOURCES OF THE MONETARY POWERS OF THE CONGRESS.

1. The Congress has an authority with respect to the national monetary system and the currency[1] not confined by the limitations of any one specific grant in the Constitution. The exertion of this authority may be supported by the "resulting" or "composite" powers arising through the combination or aggregation of any or all of the specific grants of power.

The Constitution specifically confers upon the Congress the broad power "* * * To Coin Money, regulate the Value thereof, and of foreign Coin * * *",[2] but this Court has not been content to confine the authority of the Congress over the national monetary system and the currency to the limitations of even this broad clause. In the great decisions which established the authority of the Congress to issue irredeemable paper money and make it legal tender for the payment of money contracts, past and future,[3] this Court expressly declined to rest the Congressional power with respect to the monetary system and the currency upon the coinage and valuation clause alone, and in terms ruled that the power to enact the legislation there challenged might be sought and found in a combination of the powers conferred by § 8 of Art. I, including the "necessary and

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[1]Except where the context otherwise indicates, the term "currency" is herein used in the broad sense, as including any form of the circulating media, whether coin or paper.

[2]Art. I, § 8, cl. 5.

[3]*The Legal Tender Cases*, 12 Wall. 457.
Julliard v. *Greenman*, 110 U. S. 421.

proper" clause,[4] as a "resulting power" arising from the aggregate of any or all.

The reasons which impelled the Court to this broad view of the source of the monetary powers of the Congress are distinctly set forth in the opinions in *The Legal Tender Cases* and in *Juilliard* v. *Greenman*.[5] The Court adverted to the inconclusive character of the debates upon that subject in the Constitutional Convention;[6] to the significant silences of the Constitution and to the prohibitions it places upon the exercise of monetary powers by the States, as well as to the aggregate force of the several grants to the Congress considered together. Most significant of all, however, was its reference to and reliance upon a broad consideration of the great objects sought to be attained by the Constitution, the sovereign character of the Government thereby created, and the historical scope of the normal and well-understood powers of sovereign governments in the regulation of national monetary systems.

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[4]Art. I, § 8, cl. 18: "The Congress shall have Power * * * To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

[5]Note 3 *ante*.

[6]*Juilliard* v. *Greenman*, 110 U. S. 421, 443. This conclusion is confirmed by the researches of scholars. Breckenridge, speaking of the power to declare paper money a legal tender, concludes, after a review of the debates and other historical sources, that

> "Silence as to that was maintained; and all that can be said as to the interpretation of that silence is that, although there was a strong and well-nigh universal dread of paper issues, there was a stronger dread of too narrowly limiting the powers of the new legislature; and that there was neither a very definite nor a unanimous opinion * * * as to the extent of the power granted." Legal Tender, p. 85.

Professor Thayer reaches like conclusions. Legal Tender, 1 Harvard Law Rev. 73, 76-80.

Referring specifically to the source of the powers in question, the Court in *The Legal Tender Cases* said:

> "And here it is to be observed it is not indispensable to the existence of any power claimed for the Federal government that it can be found specified in the words of the Constitution, or clearly and directly traceable to some one of the specified powers. Its existence may be deduced fairly from more than one of the substantive powers expressly defined, or from them all combined. It is allowable to group together any number of them and infer from them all that the power claimed has been conferred. Such a treatment of the Constitution is recognized by its own provision. * * *" (p. 534)
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> "And it is of importance to observe that Congress has often exercised, without question, powers that are not expressly given nor ancillary to any single enumerated power. Powers thus exercised are what are called by Judge Story in his Commentaries on the Constitution, resulting powers, arising from the aggregate powers of the government. * * *" (p. 535)[6a]
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> "Indeed the whole history of the government and of congressional legislation has exhibited the use of a very wide discretion, even in times of peace and in the absence of any trying emergency, in the selection of the necessary and proper means to carry into effect the *great objects* for which the government was framed, and this discretion has generally been unquestioned, or, if questioned, sanctioned by this court. This is true not only when an attempt

[6a] *2 Story's Comm. on the Constitution*, § 1256 (5th Ed.); *Willoughby on the Constitution*, § 54.

> has been made to execute a single power specifically given, but equally true when the means adopted have been appropriate to the execution, not of a single authority, but of all the powers created by the Constitution. * * *" (pp. 536-537)
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> "With these rules of constitutional construction before us, settled at an early period in the history of the government, hitherto universally accepted, and not even now doubted, we have a safe guide to a right decision of the questions before us. Before we can hold the legal tender acts unconstitutional, we must be convinced they were not appropriate means, or means conducive to the execution *of any or all of the powers of Congress, or of the government,* not appropriate in any degree (for we are not judges of the degree of appropriateness), or we must hold that they were prohibited. * * *" (p. 539)

The Court in that case did not attempt to enumerate the powers out of whose combination the power over the monetary system and currency of the United States was derived. It did, however, make it plain that the exercise of that power was one of the *great objects* of government entrusted to Congress, derived from no single clause of the Constitution, but as a resulting power arising from the aggregate of the powers conferred.

In the subsequent legal tender case, *Juilliard* v. *Greenman,* 110 U. S. 421, the Court said:

> "The people of the United States by the Constitution established a national government, with sovereign powers, legislative, executive and judicial. 'The government of the Union,' said Chief Justice Marshall, 'though limited in its powers, is supreme within its sphere of action;' 'and its laws, when

made in pursuance of the Constitution, form the supreme law of the land.' 'Among the enumerated powers of government, we find the great powers to lay and collect taxes; to borrow money; to regulate commerce; to declare and conduct a war; and to raise and support armies and navies. The sword and the purse, all the external relations, and no inconsiderable portion of the industry of the nation, are entrusted to its government.' 4 Wheat. 405, 406, 407.

"*A constitution, establishing* a frame of government, declaring fundamental principles, and creating a national sovereignty, and intended to endure for ages and to be adapted to the various crises of human affairs, is not to be interpreted with the strictness of a private contract. The Constitution of the United States, by apt words of designation or general description, marks the outlines of the powers granted to the national legislature; but it does not undertake, with the precision and detail of a code of laws, to enumerate the subdivisions of those powers, or to specify all the means by which they may be carried into execution. * * *" (pp. 438-439)

With this as a predicate the Court then said:

"The breadth and comprehensiveness of the words of the Constitution are nowhere more strikingly exhibited than in regard to the powers over the subjects of revenue, finance, and currency, of which there is no other express grant than may be found in these few brief clauses:

" 'The Congress shall have power

" 'To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the

United States; but all duties, imposts and excises shall be uniform throughout the United States;

" 'To borrow money on the credit of the United States;

" 'To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;'

" 'To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures.'

"The section which contains the grant of these and other principal legislative powers concludes by declaring that the Congress shall have power

" 'To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.'

"By the settled construction and the only reasonable interpretation of this clause, the words 'necessary and proper' are not limited to such measures as are absolutely and indispensably necessary, without which the powers granted must fail of execution; but they include all appropriate means which are conducive or adapted to the end to be accomplished, and which in the judgment of Congress will most advantageously effect it." (pp. 439-440)

This method of constitutional construction—this doctrine of composite or resulting powers, and this insistence upon reading the constitutional grants in the light of the purposes intended to be subserved by the very establishment of the Union and with appreciation of the sovereign character of the government thereby created—did not originate with the money cases and has not been limited to them.

Long before the *Legal Tender Cases,* the doctrine had been expounded and applied by Chief Justice Marshall in *McCulloch* v. *Maryland* (4 Wheat. 316), where, in sustaining the power of the Congress to establish a national bank (a power closely related to, and involving the exercise of powers over, the monetary system and the currency, especially in its subsequent history[7]), the Chief Justice found the power to create the Bank of the United States in a combination of the taxing power, the power to borrow money, to regulate commerce, to declare war, and to raise and support armies and navies, together with the necessary and proper clause. Said Chief Justice Marshall, in announcing "the unanimous and decided opinion" of the Court in that case:

> "Although, among the enumerated powers of government, we do not find the word 'bank' or 'incorporation', we find the great powers to lay and collect taxes; to borrow money; to regulate commerce; to declare and conduct a war; and to raise and support armies and navies. The sword and the purse, all the external relations and no inconsiderable portion of the industry of the nation, are entrusted to its Government. It can never be pretended that these vast powers draw after them others of inferior importance, merely because they are inferior. Such an idea can never be advanced. But it may with great reason be contended, that a government, entrusted with such ample powers, on the due execution of which the happiness and prosperity of the Nation so vitally depends, must also be entrusted with ample means for their execution. [4 Wheat. 407, 408]
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> * * *

[7]See *Osborn* v. *Bank,* 9 Wheat 738, 863, 864.
Farmers & Mechanics National Bank v. *Dearing,* 91 U. S. 29, 33.

> "But the Constitution of the United States has not left the right of Congress to employ the necessary means for the execution of the powers conferred on the Government to general reasoning. To its enumeration of powers is added that of making 'all laws which shall be necessary and proper, for carrying into execution the foregoing powers, and all other powers vested by this Constitution, in the Government of the United States, or in any department thereof.'" [4 Wheat. 411, 412]

This broad method of constitutional construction has abundant illustration in the decisions of this Court in ascertaining the existence or extent of the powers asserted by the Congress in varied fields, and has resulted in a wide and liberal interpretation of the constitutional grants of power to the Congress, especially in those fields deemed to relate to powers normally the attributes of sovereign nations, and those having international aspects.[8]

The enumeration made by the court in *Juilliard* v. *Greenman, supra,* of certain specific powers deemed to be especially apposite to sustain the Legal Tender Acts cannot be taken as restricting to those powers the sources from which the authority of the Congress over the monetary system and the currency may be deemed to be derived. As this Court said in *The Legal Tender Cases, supra:*

> "Before we can hold the legal tender acts unconstitutional, we must be convinced they were not

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[8]See *Fong Yue Ting* v. *United States,* 149 U. S. 698, 711-712.
The Insular Cases, 182 U. S. 244, 288, 300; 195 U. S. 138, 140, 143, 149; 258 U. S. 298, 305.
United States v. *Gettysburg Electric Ry.,* 160 U. S. 668.
Mackenzie v. *Hare,* 239 U. S. 299, 311.
Selective Draft Cases, 245 U. S. 366, 377.
McGrain v. *Daugherty,* 273 U. S. 135, 161.

appropriate means, or means conducive to the execution *of any or all of the powers of Congress, or of the government*, * * *."

Juilliard v. *Greenman* establishes that the powers to tax, to borrow money, to regulate commerce, and to coin money may be combined as sources of the resulting powers of the Congress over the national monetary system and the currency, but it cannot be affirmed, upon the basis of that or any other adjudicated case, that any power conferred by the Constitution upon the Congress or upon any department of the National Government may not likewise form a source for the exercise of national authority in monetary matters.

IV

THE CHARACTER AND SCOPE OF THE POWERS OF THE CONGRESS OVER THE MONETARY SYSTEM AND THE CURRENCY.

1. The sovereign character of the national government as established by the Constitution, must be given weight in determining the scope of the powers granted to it over the monetary system and the currency.

While the United States has no inherent powers of sovereignty,[1] the Constitution specifically grants to it the sovereign character of supremacy within the sphere of its delegated powers, whether expressly enumerated, resulting, or

[1] In the sense that powers cannot be attributed to it merely because they are national in character and scope, even if not expressly granted or fairly to be deduced from any grant of power or combination of them. *Kansas* v. *Colorado*, 206 U. S. 46, 89, *et seq.*

auxiliary.[2] Not only this, but in construing the great clauses of the Constitution for the purpose of determining whether any particular power has been granted, and if so, its character and scope, the Court has frequently been guided by the fact that it was a primary purpose of the Constitution to create a sovereign nation as distinguished from a mere federation of states.[3]

In every case in which exertions by the Congress of power over the monetary system or the units thereof has been challenged in this Court, this rule of construction has been adverted to and applied, with the result that in every such case the power has been found and affirmed and given a range and scope co-extensive with that customarily exercised by sovereigns in that field. The Court has sustained statutes chartering national banks to act as fiscal agents and to issue circulating currency (*McCulloch*

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[2]Constitution, Art. IV, Cl. 2; *McCulloch* v. *Maryland*, 4 Wheat. 316, 404; *Cohens* v. *Virginia*, 6 Wheat. 264, 414.

[3]"The Constitution was intended to frame a government as distinguished from a league or compact, a government supreme in some particulars over States and people." *Legal Tender Cases*, 12 Wall. 457, 545.

The same principle has been repeatedly applied by this Court in sustaining the power of the Congress, when challenged upon the ground that a particular exertion of it was not within the terms of any grant in the Constitution. See *Mackenzie* v. *Hare*, 239 U. S. 299, 311, sustaining the power of Congress to disfranchise an American woman marrying a foreigner; *Chinese Exclusion Case*, 130 U. S. 581, 603, 605, and *Fong Yue Ting* v. *United States*, 149 U. S. 698, 706, 711-712, sustaining the power of the Congress to exclude or expel aliens; *United States* v. *Gettysburg Electric Railway*, 160 U. S. 668, sustaining the power of the United States to condemn land for the purpose of erecting a memorial upon a battlefield.

See also, *The Insular Cases* (*Downes* v. *Bidwell*, 182 U. S. 244, 288, 300; *Dorr* v. *United States*, 195 U. S. 138, 140, 143, 149; *Balzac* v. *Porto Rico*, 258 U. S. 298, 305); *Selective Draft Cases*, 245 U. S. 366, 377; *McGrain* v. *Daugherty*, 273 U. S. 135, 161; *Burnet* v. *Brooks*, 288 U. S. 378, 396.

v. *Maryland, supra*), and statutes making indefinite paper promises legal tender (*Legal Tender Cases, supra*, and *Juilliard* v. *Greenman, supra*), although nothing whatever is said in the Constitution about banks, incorporation, or legal tender authority in the national government. Application of the principle of construction referred to has resulted in rulings sustaining the national power to make currency issued under its authority the exclusive form of money in this Nation (*Veazie Bank* v. *Fenno*, 8 Wall. 533; *National Bank* v. *United States*, 101 U. S. 1, 6), and to restrict the owner of coined money of the United States to such use of it as is consistent with the governmental imprint fixing its value (*Ling Su Fan* v. *United States*, 218 U. S. 302). All these were powers long exercised by sovereigns of other nations, as shown hereafter. (See *post* pp. 47-50.) And this Court expressly said so. In *Juilliard* v. *Greenman, supra*, in reiterating and confirming the constitutional power of the Congress to create paper money and make it legal tender for contracts made after its passage as well as before, and to do so in time of peace as well as in time of war, the Court stated that the challenged enactments "accord with the use of sovereign governments", and were an exercise of a power "universally understood as belonging to sovereignty, in Europe and America, at the time of the framing and adoption of the Constitution of the United States." In *Ling Su Fan* v. *United States*, 218 U. S. 302, 310, the Court said:

> "The power to 'coin money and regulate the value thereof, and of foreign coin,' is a prerogative of sovereignty and a power exclusively vested in the Congress of the United States. * * * " (p. 310).

2. Congress is empowered to provide the people with a national monetary system and a national currency suitable to their needs, and to secure to them the full and unimpaired benefits thereof through the adoption of any measures appropriate either to the accomplishment of such purpose or for the removal of obstructions thereto.

As said in *The Legal Tender Cases*, 12 Wall. 457, 545 (1870):

> "* * * *Whatever power there is over the currency is vested in Congress.* If the power to declare what is money is not in Congress it is annihilated." (Italics ours.)

The power of Congress to provide the people with a national monetary system and a national currency suitable to their needs and to secure to them the full and unimpaired benefit thereof by any measures appropriate either to the accomplishment of such purpose or to the removal of obstructions thereto was established in *Veazie Bank* v. *Fenno*, 8 Wall. 533 (1869), and subsequently affirmed in the *Legal Tender Cases*, and *Juillard* v. *Greenman*, *supra*.

Veazie Bank v. *Fenno*, *supra* involved the constitutionality of an act of Congress imposing a tax of 10 per cent. upon the circulation of state bank notes. It was contended that the purpose of this tax was not to raise revenue, but to prohibit the circulation of such bank notes and thus to confine the circulating medium to currencies authorized by Federal statute and, as such, beyond any express power delegated to Congress, or the exercise of any power necessary and proper to carry the same into execution. In sustaining the constitutionality of this act, the Court said (p. 548):

> "It cannot be doubted that under the Constitution the power to provide a circulation of coin is given to Congress. And it is settled by the uniform practice of the government and by repeated decisions, that Congress may constitutionally authorize the emission of bills of credit. * * *
>
> "The methods adopted for the supply of this currency were briefly explained in the first part of this opinion. It now consists of coin, of United States notes, and of the notes of the National banks. * * *
>
> "Having thus, in the exercise of undisputed constitutional powers, undertaken to provide a currency for the whole country, it cannot be questioned that Congress may, constitutionally, secure the benefit of it to the people by appropriate legislation. To this end, Congress has denied the quality of legal tender to foreign coins, and has provided by law against the imposition of counterfeit and base coin on the community. To the same end, Congress may restrain, by suitable enactments, the circulation as money of any notes not issued under its own authority. Without this power, indeed, its attempts to secure a sound and uniform currency for the country must be futile."

See also *National Bank* v. *United States*, 101 U. S. 1 (1879).

The character of the monetary system to be established, what forms of currency shall be provided and what shall be their legal tender qualities, are at all times matters for the determination of Congress. *Veazie Bank* v. *Fenno, supra; Legal Tender Cases, supra; Ling Su Fan* v. *United States*, 218 U. S. 302.

In sustaining the power of Congress to issue paper money and to make the same legal tender in the fulfillment

of contracts, previously as well as thereafter made, the Court stated, in *Juillard* v. *Greenman, supra*:

> "Such being our conclusion in matter of law, the question whether at any particular time, in war or in peace, the exigency is such, by reason of unusual and pressing demands on the resources of the government, or of the inadequacy of the supply of gold and silver coin to furnish the currency needed for the uses of the government and of the people, that it is, as matter of fact, wise and expedient to resort to this means, is a political question, to be determined by Congress when the question of exigency arises, and not a judicial question, to be afterwards passed upon by the courts." (110 U. S. at p. 450.)

3. In the exercise of its power over the monetary system and the currency, the Congress is empowered to declare of what the currency shall consist, to give to every unit and description thereof the character and qualities of money having a legally defined value, irrespective of the intrinsic value of the substances out of which made, to regulate the value of such money and to make every unit and description thereof legal tender at its face value for the discharge of all money obligations, public or private, whether previously existing or subsequently incurred.

The power of Congress to determine of what the national currency shall consist, to the exclusion of all other forms of money is indisputable. [*Veazie Bank* v. *Fenno*, 8 Wall. 533 (1869), *Legal Tender Cases, Knox* v. *Lee*, 12 Wall. 457 (1870), *Juilliard* v. *Greenman*, 110 U. S. 421 (1884)].

Having at any time defined of what the national currency shall consist, it is within the power of Congress to

give to every description thereof, of whatever substance made and without regard to its intrinsic value as a commodity, all the character and qualities of money having a legally defined and uniform value by requiring its acceptance at its face value in the fulfillment of all contracts solvable in money, without reference to the time when such contracts were made. This it may do although the new money is of less intrinsic value than that in circulation at the time when the contract was made. The existence of these powers was settled beyond dispute in *The Legal Tender Cases, supra,* and *Julliard* v. *Greenman, supra.* At the outset of its opinion in the *Legal Tender Cases, supra,* the Court said:

> "The controlling questions in these cases are the following: Are the acts of Congress, known as the legal tender acts, constitutional when applied to contracts made before their passage; and, secondly, are they valid as applicable to debts contracted since their enactment? These questions have been elaborately argued, and they have received from the court that consideration which their great importance demands. It would be difficult to overestimate the consequences which must follow our decision. They will affect the entire business of the country, and take hold of the possible continued existence of the government." (12 Wall. at p. 529.)

After some further discussion of the untoward consequences of a decision adverse to the constitutionality of the legal tender acts, the Court thus stated the questions before it for determination and their relation to each other:

> " * * * And there *is no well-founded distinction to be made between the constitutional validity* of an act of Congress declaring treasury notes a legal tender for the payment of debts contracted *after*

its passage and that of an act making them a legal tender for the discharge of all debts, as well as those incurred *before* as those made after its enactment. There may be a difference in the effects produced by the acts, and in the hardship of their operation, but in both cases the *fundamental question, that which tests the validity of the legislation, is, can Congress constitutionally give to treasury notes the character and qualities of money?* Can such notes be constituted a legitimate circulating medium, *having a defined legal value? If they can, then such notes must be available to fulfil all contracts (not expressly excepted) solvable in money, without reference to the time when the contracts were made.* Hence it is not strange that those who hold the legal tender acts unconstitutional when applied to contracts made before February, 1862, find themselves compelled also to hold that the acts are invalid as to debts created after that time, and to hold that both classes of debts alike can be discharged only by gold and silver coin." (Italics ours.) (*Ib.* p. 530.)

The Court thus treated the power of Congress to make paper money legal tender for the payment of pre-existing debts as not only subordinate to the "fundamental question" presented, but as a power necessarily included in the power, if possessed by Congress, to endow the national currency of every description with the "character and qualities of money * * * having a defined legal value" by requiring its acceptance in the discharge of all debts, public or private. Such power, the Court held, Congress had, and, as an incident thereto, the power to require such acceptance in the fulfilment of pre-existing contracts. Otherwise, it is self-evident that Congress would be without the power effectively to give to the nation a currency of uniform and defined legal value.

As is shown by the approach and the holding of the Court in the *Legal Tender Cases,* the power to declare of what money shall consist of necessity includes the power to provide to what extent the same shall be received dollar for dollar in the discharge of all money obligations whether for the payment of debts, the sale of goods, the performance of services, the payment of taxes, etc. Money, as such, has no value except that resulting from its required acceptance in the discharge of such obligations. That which circulates as money may be valuable as a commodity, as in the case of gold, or practically valueless, as in the case of paper money. In either event it acquires value as money only through the imprint of the sovereign which makes it such (*Ling Su Fan* v. *United States, supra*), and by its required acceptance in discharge of obligations payable therein.

Accordingly, in determining of what money shall consist and in giving it a legally defined value, the Congress may disregard entirely the so-called intrinsic value of the substance out of which made, *i.e.* the value of such substance as a commodity.[4] *Legal Tender Cases, supra; Ling Su Fan* v. *United States, supra.* Without regard to its value as a commodity, as said in *Ling Su Fan* v. *United States,*

> "public law gives to such coinage [in that case silver coins] a value which does not attach as a mere consequence of intrinsic value. Their quality as a legal tender is an attribute of law aside from

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[4]As stated in the *Legal Tender Cases, supra,* with respect to coined money:

> "The Constitution does not ordain what metals may be coined or prescribe that the legal value of the metals, when coined, shall correspond at all with their intrinsic value in the market." (at p. 547 of 12 Wall.)

> their bullion value. They bear, therefore, the impress of sovereign power which fixes value and authorizes their use in exchange." (pp. 310-311.)

The value of money as money therefore depends upon its legal tender qualities, and their preservation, and not upon the "commodity" value of the substance out of which made. Its value in use as money may be determined by the sovereign alone, the exercise of whose powers in that regard may not be circumvented or obstructed by any private citizen. Otherwise the power to determine of what money shall consist and at what value it shall be received in the discharge of all obligations, would rest not with the sovereign but with its subjects.

Accordingly, the Sovereign, where several forms of money are in existence, may provide for the maintenance of each at a uniform value either by the enactment of a parity statute or by any other appropriate means to that end. *Ling Su Fan* v. *United States, supra.*

It was contended in the *Legal Tender Cases* that, assuming the power of Congress to make irredeemable paper promises legal tender at face value in the fulfilment of future contracts, it was without power to require their acceptance as legal tender in the fulfilment of pre-existing obligations. After considering this question at length, the Court held that Congress was possessed of such power, since

> "contracts must be understood as made in reference to the possible exercise of the rightful authority of the government, and no obligation of a contract can extend to the defeat of legitimate government authority" (p. 551).

Indeed, this ruling was foreshadowed by the statement at the outset that the determination of this question was one

necessarily governed by the determination of the fundamental question, to wit, the authority of the Government to confer upon paper money those legal tender qualities upon which its use and value as money depend. As held by the Court, this being the authority exercised, all private contracts must yield thereto, and could not be permitted to defeat the exercise of such authority (see *post* pp. 62-68; 56-61).

4. The power of the Congress over the monetary system and the currency and to determine of what money shall consist, includes the power to regulate its volume, to enhance or debase its value, to "decry" or withdraw from circulation existing forms of money, and to provide new forms of money and require their acceptance as a full substitute at equal tender value with those forms of money for which it is substituted.

These powers have been exercised by the sovereign from time immemorial. In the great case of *Mixed Money,* decided *circa* 1600 by the Kings Court (Sir John Davies' Reports, p. 48) the Court said that "* * * the King by his prerogative may make money of what matter and form he pleaseth, and establish the standard of it" (p. 55); that "* * * the King by his prerogative may also put a price or valuation on all coins" (p. 53), and that the King's prerogative extends "to give value to base metal by his impression or character" (p. 68); that he may "change his money in substance and impression, and enhance or debase the value of it, or entirely decry and annul it, so that it shall be but bullion at his pleasure" (p. 55); and these rules were stated as settled at common law and in the civil and Roman law, and were supported by a wealth of precedent.

Summarizing the result of its historical inquiry as to the precedents and law upon this point, the Court concluded:

> "And so it is manifest, that the kings of *England* have always had and exercised this prerogative of coining and changing the form, and when they found it expedient of enhancing and debasing the value of money within their dominions; and this prerogative is allowed and approved not only by the common law, but also by the rules of the imperial law."

This power to debase the coinage was a power frequently exercised by the Kings of England and other sovereigns. It was also well settled by the law of England at the time of the adoption of the Constitution that the Sovereign could require the acceptance of the debased coinage at a legal tender value equal to that which it superseded, for all purposes, including the fulfillment of contracts previously made. *Breckenridge on Legal Tender*, Chapters III, IV and V, pp. 9-26; 38-39; 46-47; *Case of Mixed Money, supra.*

The extent of this power is demonstrated by the Proclamation of Elizabeth sustained in the case of *Mixed Money*. An Irish merchant, during the reign of Queen Elizabeth and at a time when "the pure coin of England was current within" Ireland, contracted to pay an English merchant "100 l. *Sterling, current and lawful money of England*" on a named future date. Before the due date the Queen by Royal Proclamation established a new currency for use in Ireland alone, consisting of "Mixed Money" of less intrinsic value than English money, but issued in the same denominations and having the same face

value. The Proclamation required the acceptance of the new and baser money, shilling for shilling for the old, upon tender "for payment of any wages, fees, stipends, debts, etc.", on pain of punishment for contempt of the royal prerogative; "And to the intent that this *mixed money* should have the better course and circulation, it was further declared by the same proclamation, that after the 10th day of *June* immediately following, all other money which had been current within this kingdom, before the said proclamation, should be cried down and annulled and esteemed as bullion, and not as lawful and current money of this kingdom" (pp. 48-49). The Proclamation applied to Ireland alone. There was no debasement of English coinage, and the new Irish money was not required to be accepted, shilling for shilling, in England with English coin of the same denominations but of greater intrinsic value.

The question was whether "a tender of the 100 l. in the Mixed Money of the new standard, in performance of the obligation" was sufficient. According to the Proclamation it was. The sole question, therefore, was whether the making of such Proclamation was within the prerogative of the Sovereign. The Court held that it was.

This case, not the *Feist* case, is the English parallel of our case, since in the *Feist* case the question determined was merely as to the intention of the parties, and there was no proclamation, decree or statute (as there was in the *Mixed Money* case and is in the case at bar) requiring acceptance of current money of less intrinsic value in lieu of that contracted to be paid.

Historically, therefore, the power of the sovereign to determine of what money shall consist, to give to it a legally defined and uniform value, and to regulate its value, includes the power to require the acceptance of a debased

coinage or currency having the same legal tender qualities in the discharge of all obligations, past, present or future, as that which it supersedes or with which it circulates. Indeed, without this, the power to change the monetary system at will would be ineffective. Otherwise, the power to determine what shall be accepted as money and the value at which it is to be accepted would not rest with the sovereign but with the citizens individually, who could take "money" or refuse it in the discharge of obligations, as they chose, or fix such value upon it by contract as they liked. The very essence of the sovereign's control over the money and monetary system of any nation lies in its right to require that that which it has declared to be money shall be legal tender at its face value in the discharge of all obligations.

5. The Power to Regulate the Value of Money Authorizes the Congress to Control the Use of Money as a Standard of Value, as well as to Regulate its Value as a Medium of Exchange.

The Constitution empowers the Congress "to regulate the value" of money.[4a]

The petitioner argues that this grant means that the Congress may establish a "uniform measure of exchange whereby obligations could be discharged with a uniform *medium* of exchange, having some relation to the uniform *measure* of exchange". (Brief, p. 29) He likens this

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[4a] "The Congress shall have power * * * To coin Money, regulate the Value thereof, and of Foreign Coin, and fix the Standard Weights and Measures." Const. Art. I, sec. 8, cl. 5. The power of the Congress in respect of forms of money other than coins "is as broad as the like power over a metallic currency under the power to coin money and to regulate the value thereof." *Juillard* v. *Greenman, supra*, at p. 448.

grant to the grant of power "to fix the Standard of Weights and Measures" (*id.*)

This is too narrow a view of the extent of this power. Money is *both* a medium of exchange and a measure or standard of value.[5] "There are three traditional functions performed by money, those of providing a medium of exchange, *a standard of value*, and a store of savings."[6] An unqualified grant of power "to *regulate* the *value*" of money necessarily comprehends the regulation of its value when used for the performance of any of its several functions *as money*, and hence includes the power to control the use of *money* as a standard of value.[7]

This construction gives appropriate weight to the established meanings of the words "money", "regulate", and "value". The construction is inescapable if full meaning is is to be given to the word "money", as above defined. The word "regulate" means "to control" or "to govern",[8] and

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[5]The Oxford Dictionary defines "Money" as "a medium of exchange *and* measure of value".

[6]Sir Charles Morgan-Webb, "The Rise and Fall of the Gold Standard" (1934).

[7]No question as to governmental power to control the use of commodities, as such, as a standard of value in private contracts, is involved in this case, and no such question is raised by any of the current gold legislation. The contract in suit here is a money contract in every respect,—issued in consideration of the payment of money, and to be satisfied only by the payment of money.

[8]The *Oxford* Dictionary thus defines the verb "to regulate":

> "1. *To control, govern,* or direct by rule or regulations; to subject to guidance or restrictions; to adapt to circumstances or surroundings.
>
> "2. To adjust, in respect of time, quantity, force, etc. with reference to some standard or purpose; esp: to adjust (a clock or other machine) so that the working may be accurate."

Webster's Dictionary thus defines it:

> "To adjust or *control* by rule, method, or established mode.
>
> "To subject to governing principles or laws.
>
> "To adjust or maintain with respect to a desired rate, degree or condition, especially to adjust so as to work accurately."

it has been given that meaning by this Court, as used in another clause of the Constitution.[9] The word "value" connotes equivalency according to a standard.[10] The precision in the use of English in the Constitution is universally admitted, and is clearly demonstrated by the deliberate choice of the verb "regulate" (the value of money) as contrasted with the use of the verb "fix" (the standard of

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[9]Speaking of the authority of the Congress "to *regulate* Commerce with foreign nations, and among the several states", this Court said, in *Second Employers Liability Cases*, 223 U. S. 1, 47, 48, that " 'To regulate', in the sense intended, is to foster, protect, *control* and restrain, with appropriate regard for the welfare of those who are immediately concerned and of the public at large" (p. 47); and that the Congress may legislate with respect to any matter which "bears, or in the exercise of a fair legislative discretion can be deemed to bear, upon the reliability or promptness or economy or security or utility of" interstate commerce (p. 48). This is especially significant since this Court has referred to the commerce clause as one of the sources of the monetary powers of the Congress. See *Legal Tender Cases* and *Juilliard* v. *Greenman*.

[10]The *Oxford* Dictionary thus defines "value":

"I. 1. That amount of some commodity, medium of exchange, etc., which is considered to be an *equivalent* for something else; a fair or adequate equivalent or return.

"2. The material or monetary worth of a thing; the amount at which it may be estimated in terms of some medium of exchange or other standard of a similar nature.

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"4. The equivalent (in material worth) of a specified sum or amount.

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"6. The *relative status* of a thing, or the estimate in which it is held, according to its real or supposed worth, usefulness, or importance."

Webster's Dictionary thus defines it:

"1. The property or aggregate properties of a thing which render it useful or desirable, or the degree of such property or sum of properties; worth; excellence. 2. *Economics.* a Efficiency in exchange; purchasing power; market value. * * *"

weights and measures), when dealing with a distinct subject in the same clause.

The construction of the grant given above is conclusively established as the only acceptable one when consideration is given to the meaning of the express power to regulate the value of foreign coin. This, obviously, *cannot* refer to a mere power to determine of what substance the units of the circulation shall consist, to prescribe their denominations, establish their relative values *inter sese,* and to change these values from time to time. The foreign coin has already been subjected to these regulations by the sovereign power which issued it. The grant of power to the Congress "to regulate" its "value" *must contemplate a power to regulate its use in this country as a standard of value.*

If this construction be correct—if the grant of power to regulate the value of money confers upon the Congress authority to control the use which may be made, as such, of the money of the United States, as a standard of value—*a fortiori* no mere private contract, pre-existing or otherwise, can have any validity, in the face of an exercise of such power by the Congress, to give to any kind of money of the United States, as such, any worth as a standard of value other than that declared by the Congress.

6. The power to determine of what money shall consist and to regulate the value thereof, includes the power to determine and regulate the value of the several units of the currency in terms of each other and to prohibit the attempted use of one kind of money as a commodity for the purpose of realizing in another kind of money a value greater than the stated value of the first.

That Congress has the power to determine and regulate the value of the several units of the National currency in terms of each other is, of course, plain from what has already been said.

It follows as a necessary corollary that it may control and prohibit the use of one kind of money as a commodity for the purpose of realizing thereon a greater value in another kind of money than the legally defined value of the first. Otherwise, the Congressional power to determine and regulate the value of the several units of money in terms of each would be illusory and could be rendered completely nugatory. Indeed, such power would really reside not in the sovereign, but in its subjects.

This conclusion is inescapably to be drawn from the decision of the Court in *Ling Su Fan* v. *United States,* 218 U. S. 302. In that case statutes prohibiting the exportation, mutilation or melting down of coins (in order to take advantage of their bullion value, which was higher than their face value) were sustained as against an attack by the owner of such coins based upon the due process clause of the Fifth Amendment. The Court there said:

> "Conceding the title of the owner of such coins, yet there is attached to such ownership those limitations which public policy may require by reason

> of their quality as a legal tender and as a medium of exchange. These limitations are due to the fact that public law gives to such coinage a value which does not attach as a mere consequence of intrinsic value. Their quality as a legal tender is an attribute of law aside from their bullion value. They bear, therefore, the impress of sovereign power which fixes value and authorizes their use in exchange."

If one possessed of money composed of a commodity of intrinsic worth may be prevented by statute from realizing more than its face value, by exportation or melting down, clearly he may be prevented, *in praesenti,* from demanding more than its face value in other forms of *money* in *exchange* for it. In short, he may be prohibited from treating that piece of money as a commodity. It follows irresistibly that an attempt to realize the intrinsic commodity value of that piece of money, *in the future,* by a contract based upon a consideration of money and creating an obligation payable only in money, may likewise be rendered unavailing by the exercise of Governmental power.

An attempt by a money contract to realize upon the intrinsic value of the commodity content of units of money constitutes an attempt, for private purposes, to regulate the value of one form of money in terms of another, and to use one form of money as a standard of value, in usurpation of the exclusive prerogatives of the sovereign. This is so, whether that power finds its source in the power to determine and regulate the value of the several units of the currency in terms of each other, as a part of the broad power to determine of what money shall consist and to require the acceptance of all forms thereof at equal value, or in the specific power to regulate the value of money.

7. As in respect of all other powers, the power conferred includes the power to preserve and protect its exercise for the accomplishment of the objects embraced therein and to remove any and all obstructions thereto by the adoption of any appropriate means, notwithstanding any resulting interference with private rights of property or contract.

Article I, § 8, clause 18 confers upon Congress the power

> "to make all laws that shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or any department or officer thereof."

This power is no less an express power than are the specific powers conferred by the same section (*Legal Tender Cases, supra,* at p. 550; *Ruppert* v. *Caffey,* 251 U. S. 264, 301). The powers thus conferred (commonly referred to as the auxiliary powers of the Congress) are equally comprehensive, whether used in aid of an enumerated power or a resulting or composite power, or of another auxiliary power. *Legal Tender Cases, supra; Ruppert* v. *Caffey, supra.*

(A) THE COMPREHENSIVENESS OF THIS POWER TO PRESERVE THAT WHICH CONGRESS HAS CREATED AND TO PREVENT OBSTRUCTION OF OR INTERFERENCE WITH ITS UNIMPAIRED USEFULNESS FOR THE ACCOMPLISHMENT OF THE PURPOSES FOR WHICH CREATED IS EVIDENCED BY THE PREVIOUS DECISIONS OF THIS COURT ARISING UNDER THE POWER OF CONGRESS OVER THE MONETARY SYSTEM AND CURRENCY.

The extent of the power under review finds illustration in the decisions, previously discussed, relating to the mone-

tary powers of the Congress. Thus, where the Congress in the exercise of its settled power to provide a uniform currency for the whole country declares it to be the public policy of the United States so to do, it may make that declaration of policy and the exercise of that power effective by denying to foreign coins the quality of legal tender, or by restraining the circulation as money of notes of individuals or of state banks—although this nullifies the contract rights of such banks secured to them by their charter (*Veazie Bank* v. *Fenno,* 8 Wall. 533, 549)—or of municipalities (*National Bank* v. *United States,* 101 U. S. 1, 6). Similarly, having determined upon the policy of maintaining a parity between its coinage and its currency, it may prohibit the exporting or the mutilation or melting down of coins issued under its authority (*Ling Su Fan* v. *United States,* 218 U. S. 302). It may adopt appropriate measures, including the imposition of criminal penalties, to maintain the integrity of its money and to protect the public against spurious, simulated or debased money, and its power in this regard is not limited to, but is wider than, the power to punish counterfeiting expressly conferred by Art. I, § 8, cl. 6 of the Constitution. (*Baender* v. *Barnett,* 255 U. S. 224, 227; *United States* v. *Marigold,* 9 How. 560, 567-568; *Legal Tender Cases,* 12 Wall. 457, 535-536, 544-545.)

(B) THE COMPREHENSIVENESS OF THIS POWER IS ALSO EVIDENCED BY THE DECISIONS OF THIS COURT IN RESPECT OF THE RELATED POWER OF THE FEDERAL GOVERNMENT TO CREATE NATIONAL BANKS.

The power of Congress over the monetary system and currency is closely related to its power over banking agen-

cies as embraced in the power to create national banks. Indeed, in so far as the latter includes the power to authorize the issue of bank notes and to protect their unimpaired use for all purposes by prohibiting the issue of state bank notes, it may properly be regarded as an exercise of the power over the monetary system and the currency.

The power to create a national bank is nowhere specifically conferred by the Constitution. Like the power over the monetary system and currency, it was rested by the Court upon a combination of powers or upon the aggregate powers of the Government (*McCulloch* v. *Maryland, supra*). The existence of this power was originally sustained as a means necessary and appropriate for carrying on the fiscal operations of the Government. In the exercise of the further power to "preserve" that which Congress had created and "to remove all the obstacles" which "retard, impede, burden, or in any manner control the operations" of the thing created (*McCulloch* v. *Maryland*, p. 426), it has been held that Congress may authorize banks created under its authority to engage in the business of private banking (*Osborn* v. *Bank of United States*, 9 Wheat. 738) and to act as trustees, executors and administrators (*First National Bank* v. *Fellows*, 244 U. S. 416; *State of Missouri* v. *Duncan*, 265 U. S. 17), and it is not a valid objection that only a minor portion of the business of such banks relates to the fiscal affairs of the Federal Government (*Smith* v. *Kansas City Title Company*, 255 U. S. 180, 210).

The exercise of these powers does not rest upon any delegation to Congress of any general power over banking, over the administration of estates, or over contractual relations of private individuals made in relation thereto. Such powers are reserved to the states, and the act sus-

tained in each of these cases was *pro tanto* an invasion of such reserved powers. They were sustained as an exercise of the power of Congress to preserve, protect and foster the unimpaired usefulness of the instrumentalities created by Congress for the purposes for which created.

In order to preserve these banking agencies of the national government from local obstruction, it has been held that they are constitutionally exempt from state taxation (*McCulloch* v. *Maryland, supra; Osborn* v. *Bank of United States, supra; Smith* v. *Kansas City Title Co., supra*); and on similar grounds they are not subject to state usury laws (*Farmers & Mechanics Nat. Bank* v. *Dearing,* 91 U. S. 29), insolvency laws (*Davis* v. *Elmira Savings Bank,* 161 U. S. 275) or criminal laws (*Easton* v. *Iowa,* 188 U. S. 220). The extent of the protective power of the Congress in this field is demonstrated by this Court's ruling that "when it is necessary in order to prevent the evil to make the law embrace more than the precise thing to be prevented, it may do so" (*Westfall* v. *United States,* 274 U. S. 256).

(C) THE EXTENT OF THIS POWER IS FORCEFULLY ILLUSTRATED BY THE DECISIONS ARISING UNDER THE COMMERCE CLAUSE, ONE OF THE CLAUSES UPON WHICH THE POWER OF CONGRESS OVER THE MONETARY SYSTEM AND CURRENCY IS BASED.[11]

In order to make effective its power to regulate interstate commerce, the Congress may enact all appropriate legislation for its protection and advancement (*The Daniel Ball,* 10 Wall. 557, 564); and may adopt measures to pro-

[11]See *Juilliard* v. *Greenman, supra,* at pp. 439, 448.

mote its growth and insure its safety (*County of Mobile* v. *Kimball*, 102 U. S. 691, 696, 697). It may regulate relations between carriers and their employees although such relations are in their essence contractual (*Mondou* v. *New York, N. H. & H. R. R. Co.*, 223 U. S. 1, 47), and in so doing may strike down previously existing contracts and arrangements relating thereto. *Philadelphia, B. & W. R. Co.* v. *Schubert*, 224 U. S. 603. It may provide for the creation and maintenance of an adequate system of transportation suitable to the requirements of commerce and of the people. To this end it may require a carrier to surrender a portion of its revenues derived from rates in themselves reasonable, as applied to the public, paid in discharge of contractual obligation created for the carriage of persons and property (*Dayton & Goose Creek RR. Co.* v. U. S., 263 U. S. 456); exercise affirmative control over the construction and abandonment of railroads engaged in interstate commerce, although located wholly within a single state (*Colorado* v. *United States*, 271 U. S. 153), thus, in the case of abandonment, completely nullifying the contract right of the state to require such a carrier to observe the previously existing contract obligations imposed by its charter. It may also exercise an affirmative control over practices or contracts impeding, creating a burden upon interstate commerce, or obstructing its freedom or impeding its flow, all in the interest of the public affected thereby. *United Leather Workers* v. *Herkert*, 265 U. S. 457, 469; *Stafford* v. *Wallace*, 258 U. S. 495; *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1.

In order to free such commerce from the restraint of monopoly or unreasonable restraints in trade, it may strike down pre-existing contracts violative thereof, as well as prohibit the making of new contracts producing the same

result. *Addyston Pipe & Steel Company* v. *United States,* 175 U. S. 211.

In order to prevent any obstruction to interstate commerce, it may require the removal or alteration of a bridge theretofore lawfully erected over navigable waters, thus either destroying its value entirely or reducing the same in the state in which it exists. *Union Bridge Co.* v. *United States,* 204 U. S. 364, 399, 400. Finally, for the purpose of insuring to the people the benefit of an adequate system of transportation, it may assume affirmative control over intra-state as well as interstate rates, *Wisconsin R. R. Co.* v. *C. B. & Q. R. R.,* 257 U. S. 563, even though the effect of the exercise of such power is to set aside and render completely nugatory, the contractual obligation of the carrier arising from its charter to carry passengers at a contract or charter rate prescribed thereby. *State of New York* v. *United States,* 257 U. S. 591.

Many other illustrations might be given of the breadth and comprehensiveness of the power of Congress affirmatively to preserve and foster foreign and interstate commerce, irrespective of the effect of the control exercised thereover either upon the rights of the sovereign states or the rights of private individuals, whether growing out of pre-existing contracts or arrangements or otherwise.

V

THE RESOLUTION WAS BOTH (1) AN AFFIRMATIVE EXERCISE OF THE POWERS OF THE CONGRESS OVER THE MONETARY SYSTEM AND THE CURRENCY AND TO REGULATE THE VALUE OF MONEY, AND (2) A MEASURE BOTH APPROPRIATE AND NECESSARY TO PRESERVE THE SAME AND TO REMOVE AN OBVIOUS OBSTACLE TO THEIR EXERCISE.

1. Private individuals may not by prophetic discernment, through contracts previously entered into, any more than by contracts subsequently made, withdraw from the control of the Congress any part of its legislative field or limit or obstruct the exercise of its powers therein.

In *Philadelphia, Baltimore & Washington R.R.* v. *Schubert*, 224 U. S. 603 (1912), the appellant claimed exemption from a statutory provision rendering void any contract, the purpose of which should be "to enable any common carrier to exempt itself from any liability created by this Act" (the Employer's Liability Act) upon the ground, among others, that such provision of the Act, as applied to a pre-existing contract creating such exemption, was beyond the constitutional power of the Congress. The Court, speaking through Mr. Justice Hughes, sustaining the constitutionality of this provision, said (at pp. 613-614):

> "The power of Congress, in its regulation of interstate commerce, and of commerce in the District of Columbia and in the Territories, to impose this liability, was not fettered by the necessity of maintaining existing arrangements and stipulations which would conflict with the execution of its policy. *To subordinate the exercise of the Federal authority*

> *to the continuing operation of previous contracts, would be to place, to this extent, the regulation of interstate commerce in the hands of private individuals and to withdraw from the control of Congress so much of the field as they might choose by prophetic discernment to bring within the range of their agreements.* The Constitution recognizes no such limitation. It is of the essence of the delegated power of regulation that, within its sphere, Congress should be able to establish uniform rules, immediately obligatory, which as to future action should transcend all inconsistent provisions. *Prior arrangements were necessarily subject to this paramount authority.*"

The principles enunciated in that case were reiterated and applied in *Sproles* v. *Binford*, 286 U. S. 374, 390-391.

In the affirmative exercise of its power to regulate commerce, the Congress may also strike down contracts, or provisions therein, between private individuals and a sovereign state, where their continuing operation, if permitted to survive, would have the effect either of withdrawing from the control of the Congress any part of its legislative field, or prevent or obstruct the full exercise of its powers therein. *State of New York* v. *United States*, 257 U. S. 591 (1922); *State of Colorado* v. *United States*, 271 U. S. 153 (1926). Both of these cases arose under the Transportation Act, having for its purpose the establishment of an adequate system of transportation. In *State of New York* v. *United States*, *supra*, the Interstate Commerce Commission, in the exercise of powers conferred upon it by that Act, ordered the New York Central Railroad to increase its passenger fares within the State of New York from 2¢ to 3.6¢ per mile, which order this Court sustained. By its charter the railroad was compelled to carry passen-

gers at 2¢ per mile. The orders of the Interstate Commerce Commission are legislative in character, and when made, have the force of a statute. The effect of the order sustained was thus to nullify the contract right of the state to require carriage of passengers at 2¢ per mile. It did not, as in *Philadelphia, Baltimore & Washington Railroad* v. *Schubert, supra,* annul the contract entirely. The New York Central was still bound thereunder to carry passengers, but the order of the Commission changed *the measure of payment* therefor from that contained in the charter to that prescribed by authority of the United States.

In *State of Colorado* v. *United States, supra,* the Commission under authority of the Transportation Act authorized the abandonment of a railroad located wholly within the State of Colorado. In so doing it completely nullified the contract between the State and the Railroad embodied in its charter, under which it was required to operate its railroad.

See, also, *Louisville & Nashville R. R.* v. *Mottley,* 219 U. S. 467, *Calhoun* v. *Massie,* 253 U. S. 170, *Great Northern Ry. Co.* v. *Sutherland,* 273 U. S. 182, in each of which the Act of Congress in question nullified, affected or impaired the value of pre-existing private contracts.

In *Calhoun* v. *Massie, supra,* the Court sustained the validity of an act, which had the effect of revising downward and changing the measure of payment under a contract with an attorney for the prosecution of claims against the United States, on the ground that the sovereign power of the Congress to grant claims for relief against the United States included as a necessary incident the power to do so upon "such condition as it deemed proper".

The power of the Congress over the monetary system and currency is as great as its power to regulate inter-

state commerce, and its right to nullify and affect pre-existing contracts, as well to forbid the making of new contracts, which, if permitted to continue or be made, would either limit or obstruct the exercise of such powers, is equally unlimited. Indeed, since substantially all contracts are money contracts, it is apparent that any exercise of the powers of Congress over the monetary system affects to some extent the bulk of the contracts of the Nation, and that private contracts, if permitted to fetter the exercise of the powers of Congress in the monetary field, would have the effect of nullifying the Congressional powers therein to a greater extent than in almost any other sphere reserved to it.

The first case in which the Congress, in the exercise of its power over the monetary system and the currency, nullified pre-existing contracts was by the statute sustained in *Veazie Bank* v. *Fenno*, 8 Wall. 533 (1869), the effect of which was to abrogate completely the contract right of state banks, arising from their charters, to issue state bank notes. In that case, as in *State of New York* v. *United States, supra*, and *State of Colorado* v. *United States, supra*, the contract rights so abrogated were contracts between private parties and a sovereign state.

Subsequently, the same principle was applied and the same right was upheld in *The Legal Tender Cases* in connection with the power of the Congress to make all forms of money legal tender of equal value in the fulfilment of contracts, whether made before or after their passage.

As we have seen, the very essence both of the power conferred upon the Congress to regulate the value of money and of the broader power over the Nation's monetary system and currency is its power to establish and preserve unimpaired the legal tender qualities and value of all

descriptions of the currency. Although the dissenting justices in *The Legal Tender Cases* denied the power of the Congress to make anything other than metallic money legal tender, the majority held to the contrary, and no one at this date would deny the right of the Congress to provide a modern monetary system and currency consisting largely of paper money, resting on such a base as the Congress may determine, and to make every description thereof legal tender at face value for all purposes.

The Court in those cases also divided upon the question as to whether the new and intrinsically less valuable money, created by the Government and given the quality of legal tender, could be required to be accepted as such at its face value in discharge of pre-existing contracts, thus impairing their value. The majority held that it could. The minority asserted that it could not. The question was squarely presented and as squarely decided. The observations of the majority in that regard are, therefore, not *dicta*. In asserting that the Congress was not possessed of this power, the minority approached the question primarily from the standpoint of due process. The majority, on the other hand, approached the question primarily from the standpoint of power, and, finding that the power existed, denied the application of the due process clause as a restraint thereon.

Referring specifically to the resulting interference with private contracts and of rights assumed to have been acquired thereunder, the Court said:

> "* * * Contracts for the delivery of specific articles belong exclusively to the domain of State legislation, while contracts for the payment of money are subject to the authority of Congress, at least so far as relates to the means of payment. They are engagements to pay with lawful money of the United

States, and Congress is empowered to regulate that money. It cannot, therefore, be maintained that the legal tender acts impaired the obligation of contracts.

"Nor can it be truly asserted that Congress may not, by its action, indirectly impair the obligation of contracts, if by the expression be meant rendering contracts fruitless, or partially fruitless. Directly it may, confessedly, by passing a bankrupt act, embracing past as well as future transactions. This is obliterating contracts entirely. So it may relieve parties from their apparent obligations indirectly in a multitude of ways. It may declare war, or, even in peace, pass non-intercourse acts, or direct an embargo. All such measures may, and must operate seriously upon existing contracts, and may not merely hinder, but relieve the parties to such contracts entirely from performance. It is then, clear that the powers of Congress may be exerted, although the effect of such exertion may be in one case to annul, and in other cases to impair the obligation of contracts. * * *" (pp. 549-550)

"If, then, the legal tender acts were justly chargeable with impairing contract obligations, they would not, for that reason, be forbidden, unless a different rule is to be applied to them from that which has hitherto prevailed in the construction of other powers granted by the fundamental law. But, as already intimated, the objection misapprehends the nature and extent of the contract obligation spoken of in the Constitution. As in a state of civil society property of a citizen or subject is ownership, subject to the lawful demands of the sovereign, *so contracts must be understood as made in reference to the possible exercise of the rightful authority of the government, and no obligation of a contract can extend to the defeat of legitimate government authority.*" (pp. 550, 551) (Italics ours)

The principle of all of the cases cited is, of course, that stated in *The Legal Tender Cases*, to wit, that private contracts the subject matter of which is within the field of congressional power, are made in subordination to the exercise of that power and must yield thereto. Nor is it important whether the resulting nullification or impairment of pre-existing private contracts results from the incidental effect of legislation within the congressional field, as in *Veazie Bank* v. *Fenno, supra*, or by a statute aimed directly and in terms at the contract itself, as in *Philadelphia, Baltimore & Washington R. R.* v. *Shubert, supra*, *Calhoun* v. *Massie, supra*, and in the instant case.

2. By prophetic discernment, private individuals have attempted to withdraw billions of dollars of obligations payable in lawful money of the United States from the exercise by the Congress of its power over the monetary system and the currency and to regulate the value of money.

Such was the conceded purpose of the clause at its inception. When the plaintiff's bond was issued and when substantially all, if not all, gold clause bonds now outstanding were issued, the power of the Congress to require the acceptance at face value of all forms of legal tender irrespective of their relative intrinsic values in the fulfilment of contracts, whether made before or after the adoption of such an act, had been sustained. *Legal Tender Cases, supra*. As stated by the Court, Congress had the power to make the paper currency in question "equivalent in value to the representative in value determined by the coinage acts" (12 Wall. at p. 553). It had likewise been held in that case that contracts payable in money were subject to the authority of the Congress, since the Congress is empowered to regulate the money in which to be paid. The

very purpose of the clause, therefore, was to remove every contract containing such a clause, now amounting to not less than $100,000,000,000, from the exercise of, the legal tender and other powers of the Congress over the money system and the currency.[1]

It is true that in *Trebilcock* v. *Wilson*, 12 Wall. 687, the Court held the legal tender acts inapplicable to contracts calling for payment in specie, *i.e.*, in a particular kind of money. That case, however, turned wholly upon a question of statutory interpretation, the Court holding the act by its terms to be inapplicable to such contracts. The question of power was neither determined nor discussed.

In the absence, therefore, of a statute requiring the acceptance of all forms of money at their face value in the discharge of obligations payable in specie, it was competent for the parties, as they have, to make and enforce such contracts. Giving to the clause the force now claimed for it by the petitioner and others, its purpose was as well to withdraw from the legal tender powers of Congress, among others, all contracts containing such a clause. But, as was said by Mr. Justice Bradley in his concurring opinion in the *Legal Tender Cases*, to hold unconstitutional an act requiring acceptance of legal tender as defined by the Con-

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[1] If "gold coin" contracts, such contracts were obviously attempts to limit the Congressional power to make other forms of currency legal tender for all purposes. In substance, they were attempts to preclude Congress from making such other forms of currency "money" for purposes of discharge of such contracts, since the fundamental characteristic of money and its peculiar value is its legal tender quality.

If "gold value" contracts, such contracts were obvious attempts to limit the Congressional power to make other forms of money "equivalent in value", in the discharge of debts, to gold coin, unless of the same intrinsic value. In other words, they were attempts to preclude any meaningful exercise by Congress of its power to assign to the several units of the currency the legal value without regard to their intrinsic values.

gress in discharge of obligations specifically payable in specie,

> "would completely nullify the power claimed for the government. For it would be very easy, by the use of one or two additional words, to make all contracts payable in specie" (p. 567).

If, therefore, these contracts were made—as it is claimed they were—in anticipation that they might legally survive a subsequent statute requiring them to be discharged at face value in legal tender at the time of payment, they were made for the purpose, and if permitted to stand would have the effect, of withdrawing from the Congressional field so much thereof as private parties had chosen "to bring within the range of their agreements". *Philadelphia, Baltimore & Washington R. R.* v. *Schubert, supra.* As in that case it was said that to permit agreements to have such effect would be to place "the regulation of interstate commerce in the hands of private individuals", so to give the agreement at bar such effect would be to place control of the monetary system and the currency and the regulation of the value of money within the control of private individuals instead of within the control of Congress. As already pointed out, the very essence of the power to determine of what money shall consist, lies in the power to require its acceptance as legal tender at its face value irrespective of the intrinsic value of the substance from which made. As also demonstrated the power to regulate the value of money includes the power to regulate the value of one form of money in terms of another.

As we have pointed out, it was held in the *Legal Tender Cases* themselves that the primary question was whether or not Congress had the power to give to every kind of money

the full character and qualities thereof by maintaining all forms thereof at equal and uniform value in the discharge of all obligations. If, as pointed out by Mr. Justice Bradley, private individuals by contracts, whether previously made or subsequently entered into, may assign to such money a different value from that placed upon it by the Congress, then the legal tender powers of the Congress and its power to regulate the value of money and indeed to determine of what money shall consist are effective only to the extent they are suffered to be effective by the people. Such a conception of the relation of private rights to the powers of the Congress would reduce money to the status of a mere commodity to be valued as such by private individuals in every transaction in which used, and would destroy entirely the value of money as money, the regulation of which is within the powers of the Congress. But Congress may by any appropriate measure prevent the use of money as a commodity and prevent any possessor thereof from realizing from its ownership a "commodity" value in excess of the "money" value assigned to it by the Congress. *Ling Su Fan* v. *United States, supra.*

Postponing for a moment consideration of the existing situation as affecting either the purpose of these contracts or the validity of the legislation, it is apparent that they were at their inception designed to withdraw from the control of Congress all obligations containing a gold clause in respect of matters clearly committed to Congress, whether or not our conception of its powers, as a whole, be right or wrong. History had taught that at recurring periods, either by reason of economic depression or of a disproportionate increase in the volume of those forms of money of lesser intrinsic value, gold coin had either been hoarded or taken flight or was obtainable only at a pre-

mium. It was to provide against this contingency—and this contingency alone—that these clauses were inserted.[2] So long as other forms of money continued to be universally received at a parity with the gold dollar of the old weight and fineness, these clauses were of no importance to the bondholder. At the time that these contracts were made, such coin was in circulation. At their inception, therefore, their purpose was to withdraw all contracts containing a gold clause from the power of Congress to make every dollar of equal value with every other dollar, and to preserve unimpaired the full legal tender qualities of all forms of money.

But it has been within the power of the Congress at all times to require the acceptance of every description of the currency as legal tender at its face value and of equal legal tender value with every other form of currency, and to take all measures necessary and appropriate for the achievement of these ends. This was settled in the *Legal Tender Cases*, *supra*, and in *Ling Su Fan* v. *United States*, *supra*. It was accomplished in the former case by the required acceptance of paper money at a legal tender value equal with gold. It was accomplished in the second case by prohibiting any private person having ownership of money from obtaining the benefit of a commodity value higher than its legal tender value either through melting down for purposes of sale as bullion or by its exportation. In that case, curiously enough, it was silver and not gold which was at a premium. The measures therein sustained were enacted for the purpose of preventing any citizen or resident of

[2]It is a matter of common knowledge that, historically, these clauses had their origin in the fear that Congress might at some time provide for the free coinage of silver and for the additional issue of paper money in amounts disproportionate to gold coins.

the Philippine Islands from obtaining the benefit of such premium either in domestic use or by exportation.

A premium on gold or any other form of coin arises primarily from excessive demand therefor, customarily resulting in hoarding, melting down as bullion, or exportation. These phenomena usually appear only in times of economic crises or by reason of dislocation in the currency system through the issue of disproportionate volumes of money of lesser intrinsic value. But whatever their cause, they are manifested in the first instance by an excessive demand for the particular kind of money in question, thus sending it to a premium. The multiplicity and extent of the gold clauses in this country have always been such as to create such a potential concerted demand for gold as to bring about the foregoing results. Hence they have always constituted a threat to the maintenance of parity. This was evident to the Congress at the time of the adoption of the Resolution. At that time there had been no basic change in our monetary system. Gold coin of the old weight and fineness was still a part of the currency, although permitted to circulate only in limited quantities. It was uncertain at the time of its adoption whether the President would exercise any of the powers conferred by the Thomas Amendment or not. Many hoped and believed that resort thereto might be averted. Exportation and hoarding of gold had been prohibited, but the excessive demand for gold created by the gold clause obligations still hung over the country and was a threat to the continued parity of all forms of money, irrespective of any subsequent possible basic change in the monetary system itself. At the time of its adoption, therefore, the Resolution was a necessary and appropriate measure to maintain the equal value of every dollar and to preserve a parity between all then existing

forms of currency. That it was valid as such is definitely supported by the *Legal Tender Cases* and *Ling Su Fan* v. *United States.*

But there is no constitutional requirement that the Congress should postpone the exercise of this or any other part of its money power until times of economic stress and crisis. On the very day after the plaintiff's bond or any other bond containing a gold clause was issued, a statute similar to the Resolution could have been enacted by the Congress and would have been within the exercise of the aforesaid and all the other powers hereinbefore reviewed. If thereafter, as those who inserted the clauses feared, increased volumes of silver or paper money had been issued, such an act would have retained its characteristics as a parity measure and the holders of bonds containing such clauses would have had no legal cause of complaint. The gold clause, therefore, has been at all times ineffective for the very purpose for which it was inserted, viz., to guard against an increase in the volume of other forms of money of less intrinsic value than gold, if at any time the Congress in the exercise of its power over the monetary system determined to provide such additional currency, and to protect its value by the enactment of parity and other statutes for such purpose.

And if later on the Congress had withdrawn gold coin itself, leaving the other forms of money theretofore declared to be equal therewith to circulate, the legal tender qualities of such money would not be less than before and would continue to be required for acceptance in the fulfilment of all obligations, past or present, whether containing a gold clause or not. Similarly, if thereafter the Congress had provided some new form of money, giving to it the same legal tender qualities as that theretofore de-

cleared to be equal to gold coin, such new form of money would automatically take its place in the currency system, have the same value, and be equally required for acceptance in the discharge of all such obligations. For the power to determine of what money shall consist, to give it the qualities of legal tender, to require its acceptance at its face value in the discharge of obligations, to regulate its value, to control its use as a standard of value, and to prohibit its use as a commodity, are all powers vested in the Federal Government, of which the right to enact and enforce a parity statute is but an exercise. All are but parts of the more fundamental power of the Congress to provide the people with a monetary system and a currency believed by it to be suitable to their needs and to those of their commerce and to insure to them the full and unimpaired benefits thereof.

The purpose of the foregoing is to show the relation between gold clause contracts and the power of the Congress, and to demonstrate, if further demonstration be required, that their purpose at their inception, judged in the light of the conditions under which made, was to withdraw obligations containing such clauses from the control of the Congress in the exercise of these indisputable powers. The extent to which such contracts have been made, representing as they do substantially all of the funded debt of practically all corporations engaged in interstate and foreign commerce and a large part of the public debt, and the consequent attempted nullification of effective control by the Congress over our monetary system and currency, is impressive. But were there but a single such contract, it would equally be an attempt by prophetic discernment to limit the Congressional field *pro tanto*, and as such, beyond the control of any individual.

3. If by prophetic discernment individuals may limit the monetary powers of Congress through the making of pre-existing contracts, they are equally possessed of the power to render nugatory the prohibition which the Resolution contains against the insertion of similar clauses in subsequent contracts and hence to withdraw entirely from the Congressional field all legal tender powers of Congress and its power to regulate the value of money.

The Resolution after its recitals begins by declaring the existence of gold clauses or any other form of contract requiring payment to be made in any particular kind of money or in "an amount of money measured thereby" against public policy. It strikes down all existing contracts containing such a clause and prohibits the making of others in the future. In none of the briefs which we have seen has the power of the Congress to prohibit the future insertion of such a clause in any contract been disputed. The reason is obvious. For if future contracts can be withdrawn from the Congressional field as to either their means or measure of payment (if the latter is measured in terms of some particular kind of money), then the exercise of the legal tender powers of Congress and of the power to regulate the value of money—confining our consideration for a moment to these two incidents of the money power as a whole—may be completely frustrated and rendered nugatory by private individuals. The legal tender qualities of money become a matter of contract instead of a matter of statute. The Government's power over the currency is thus limited to a determination of the weights, shapes, sizes and substances out of which money shall be made, to the stamping of coins and the engraving of paper, and the placing on both of certain denominations representing their

supposed face value. The acceptance of the same, or any part thereof, however, at such face value is dependent upon the sufferance of multitudes of people constituting the nation over whom, in its control of the currency, the Federal Government has hitherto been supposed to be supreme. Such a conception of the rights of the individual as related to the powers of the Congress would permit the former to deprive the latter not only of its legal tender powers and its power to regulate the value of money, but of the more fundamental powers to determine of what money shall consist, to give to it a legally defined value, and to establish a currency suited to the needs of the people and to make such basic changes therein from time to time as it chose.

But there is no valid distinction between the right of private individuals thus to withdraw from the Congress the exercise of its legal tender powers, of its power to regulate the value of money and of its power over the monetary system and the currency generally in respect of future private engagements than in respect of those previously made. This case does not turn, in its last analysis, upon an attempted interference by the Government with either pre-existing contracts or the right to contract for the future, but with the extent of the right of the private individual by contracts—whether previously made or subsequently entered into—to interfere with the powers of the Government over the monetary system and the currency.

The whole argument in opposition to the Resolution lies in the contention that it is within the right of a private individual to specify payment in a particular kind of money or in an amount of money measured thereby, and that, since no power to regulate private contracts as such has been extended to the Government, the Government may not interfere with the enforcement of such a contract. This

depends upon whether such contracts payable in lawful money of the United States may be brought within the reach of its money power. If not, then the prohibition, which the Resolution contains, against the making of a contract in *futuro*, is as much an interference with the right of private contract as is the prohibited enforcement of pre-existing contracts.

The Resolution was adopted on June 5, 1933, before there had been any basic change in our monetary system and when gold coin of the old weight and fineness was still a part of the currency, although largely but temporarily withdrawn from circulation. The Resolution forbade any person from thereafter making a contract payable in such coin or in an amount of money measured thereby. Unless such contracts thereafter made were within the field of the monetary powers of the Congress, it was without power to enact this prohibition. If such future contracts were within the Congressional field because contracts payable in money of the United States, then all similar contracts theretofore made were equally within that field. Hence, any attempt by prophetic discernment to limit such field or obstruct the powers of Congress therein is as much beyond the power of any private individual as his right subsequently to enter into such a contract made subsequent to the passage of the statute.

This, we think, follows not only on reason but upon the authority of the *Legal Tender Cases*, wherein it was said that there was

> "no well-founded distinction * * * between the constitutional validity of an act of Congress declaring treasury notes a legal tender for the payment of debts contracted after its passage and that of an act making them a legal tender for the discharge of

> all debts, as well as those incurred before as those made after its enactment."

As therein pointed out, there may be a difference in the effects produced or in the degree of resulting hardship, but none in respect of the question of power. And so the Court finally concluded:

> "Hence it is not strange that those who hold the legal tender acts unconstitutional when applied to contracts made before February, 1862, find themselves compelled also to hold that the acts are invalid as to debts created after that time, and to hold that both classes of debts alike can be discharged only by gold and silver coin."

Those who challenge the validity of the Resolution as applied to pre-existing contracts are thus logically driven to the same position, to wit, that it is invalid in its application to future contracts. This is so because the grounds of its supposed invalidity, as applied to pre-existing contracts, are equally applicable to its applicability to future contracts, while on the other hand, if the latter are within the legislative field, the former are likewise within it. The basis of the attack upon the validity of the Resolution as applied to pre-existing contracts is therefore such as to withdraw from the Congressional field all money contracts irrespective of their date. But, except as given away or paid in satisfaction of taxes, or for other unimportant exceptions, money is used only in the fulfilment of contractual obligations. It is for this use primarily that currency is provided, money given a legally defined value by the sovereign, and required to be accepted as such in the fulfilment of such obligations. The inevitable logic of those who challenge the

validity of the Resolution is thus to render vain and meaningless all of the powers of the Congress over the monetary system and the currency, hereinbefore reviewed.

4. Gold clause obligations, at all times a latent threat to the stability of the monetary system and currency, had, at the time of the adoption of the Resolution, become an obvious obstacle to the maintenance of a stable monetary system and currency, which it was within the power of the Congress to remove both to meet the then existing emergency and to prevent its recurrence.

It is the duty, as well as within the power of the Congress to provide the Nation with a stable monetary system and currency. Any instability therein is calculated to create and foster panics, dislocate and demoralize our whole economic and social fabric and impede, if not paralyze, both foreign and interstate commerce. A monetary system and a currency which lack the elements of stability are not such as are suited to the needs of the people and its commerce.

As we have pointed out, the nature and purpose of the gold clause was such as, at its inception, to constitute a latent threat to the maintenance of a stable monetary system and currency. At the time of the adoption of the Resolution, these clauses had become more than a latent threat to such stability. They were an obvious obstacle to the restoration and maintenance of a stable monetary system and currency, and hence to the processes of recovery. In the months preceding the opening of the 73rd Congress and during the first session thereof, all those phenomena which at various times in the history of all nations have resulted in an unsettlement of the monetary system and the

currency, and in sending gold to a premium, were present. So serious was this condition that at the opening of the Congress the President, by Presidential Proclamation, closed all the banks. Gold was going into hiding and taking flight abroad. Panic psychology had taken hold of numberless people everywhere. In the single month preceding the opening of the Congress there had been excessive withdrawals of gold for hoarding or exportation. By executive orders, taken under the authority of the Congress and subsequently confirmed by it, these tendencies had been arrested in part by prohibition against exportation and a limitation of the amount of gold coin which any one person might have in his possession.

The Congress was about to recess. The Congress had itself declined to make any change in our basic monetary system, but the Thomas Amendment had empowered the President so to do. Many believed that their exercise would be unnecessary. It was perfectly obvious, however, that there could be no restoration of normal monetary conditions, irrespective of the exercise or non-exercise of the powers conferred upon the President by the Thomas Amendment, so long as the stability of the monetary system was threatened by the hoarding or exportation of gold, or by any other condition which threatened such stability, through the creation of an excessive demand for gold coin, with its resulting tendency to drive it to a premium.

Upon the question of power it is immaterial whether there had been at the time in effect but a single gold clause obligation or a multitude thereof. Inserted, however, as they had been, as a matter of routine in all large money contracts, their existence was an obvious obstacle to the restoration and maintenance of a stable monetary system and currency, whether the powers conferred by the Thomas

Amendment were ever exercised or not.[3] It has been estimated that in principal amount they represented approximately one-half of the fixed indebtedness of the Nation, public and private. The annual interest charges thereon, aggregating approximately $4,750,000,000, were almost equal to the existing supply of gold then present in the country. The concerted potential demand for such excessive amounts of gold for the discharge of interest payments and to meet maturities constituted an obstacle to the restoration of stable conditions and to the arrestment of a tendency to send gold coin to a premium. It was an obstacle of precisely the same character as that to be found in the desire to export or hoard. Indeed, the obvious effect of such

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[3]It is, of course, clear, that gold clauses, however construed, had they remained enforceable, would have tended to create a disparity between the several types of money in the markets and in the payment of debts, in any financial stringency when the price of gold rose in terms of other commodities. This is true whether such clauses were intended to permit the obligee to demand payment in gold coin while it remained in circulation, or to permit the obligor, at his option, to discharge at any time by paying "gold value" in any other kind of money. If given the former construction, they tended to drive gold coin to a premium, thereby making for a disparity in the market, and to render all other forms of money of less value in the discharge of debts, since not receivable in discharge of the bulk of the large money transactions of the country. If given the latter construction, because of the universality of the practice of inserting such clauses in American money obligations, they had the effect not only of regulating the relative values of different kinds of money as between the parties thereto, but for the nation as a whole. Discharge of a gold clause obligation, so construed, by payment of as many dollars of any other kind of money as would, on the date of payment, buy the number of grains of gold in the gold coin specified in the obligation, would be an exact substitute for the alternative method of discharge, *i.e.*, payment of the specified number of dollars in gold coin. Hence, if it would take "Y" paper or silver dollars to buy the commodity content of a specified number of gold coin dollars (which we call "X"), at any time, it would also, because of the enormous number of such gold clauses, which were sufficient to control the operation of the money market, take "Y" paper or silver dollars to buy "X" gold coin dollars.

clauses in the hands of multitudes of people, was to whet the appetite to hoard itself and their existence constituted a continuing interference with the power of the Congress to maintain all forms of money at a parity.

As stated by the Congress in the preamble to the Resolution:

> "* * * the existing emergency has disclosed that provisions of obligations which purport to give the obligee the right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby, * * * are inconsistent with the declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States in the markets and in the payment of debts * * *".

And as stated in the report of the House Committee on Banking and Currency, recommending favorable action on Public Resolution No. 10 (Report No. 179, 73d Congress, 1st Session):

> "1. The occasion for the declaration in the Resolution that the gold clauses are contrary to public policy arises out of the experience of the present emergency. *These gold clauses render ineffective the power of the Government to create a currency and determine the value thereof.* If the gold clause applied to a very limited number of contracts and security issues, it would be a matter of no particular consequence, but in this country virtually all obligations, almost as a matter of routine, contain the gold clause. In the light of this situation two phenomena which have developed during the present emergency make the enforcement of the gold clauses incompatible with the public interest. The first is

> the tendency which has developed internally to hoard gold; the second is the tendency for capital to leave the country. Under these circumstances no currency system, whether based on gold or upon any other foundation, can meet the requirements of the situation in which many billions of dollars of securities are expressed in a particular form of the circulating medium, particularly when it is the medium upon which the entire credit and currency structure rests."

In the light of the foregoing facts and of matters which are within the common knowledge of all, there can be no doubt as to the correctness of these findings. Considered in the light of the conditions existing at the time of its adoption, the Resolution is thus fully sustainable as the exercise of the power of the Congress to maintain all forms of money at an equal value in the discharge of obligations and in the markets and to take all measures necessary and appropriate for preventing any form of money from going to a premium both to meet the conditions then existing and to prevent their recurrence. The *Legal Tender Cases*, *supra*, and *Ling Su Fan* v. *United States*, *supra*.

The Resolution was also adopted in anticipation of a possible basic change in our monetary system under the powers conferred by the Thomas Amendment. In the event of such change, the gold clause obligations would have an equally unsettling effect upon the stability and usefulness of such monetary system as might be provided, and upon its relation to the restoration, preservation of normal and stable economic and social conditions, and to our domestic and foreign commerce. Whether the old system was to be preserved or a new system provided as a substitute therefor, these clauses if permitted to be given continuing effect, were an obvious obstacle to the maintenance of a stable monetary system and currency.

5. The Resolution was (1) an affirmative exercise of the power of the Congress to provide the Nation with a monetary system and currency believed by it to be suitable to the needs of the people and their commerce, and (2) of the power to remove an obvious obstruction or obstacle to the exercise of this power.

The fundamental power involved in this case is the power to provide the people with a monetary system and a currency believed by the Congress to be suitable to their needs and to the requirements of their commerce, both foreign and domestic, and to insure to them the full and unimpaired benefit thereof by all appropriate means. It is for the Congress to determine what that system shall be, and it is empowered to change it at will. All questions as to the wisdom and expediency of any measures adopted in the accomplishment of the aforesaid purposes are likewise for it.

Gold clause obligations were an obvious obstruction to the effective exercise by the Congress of its indisputable authority to make a basic change in our monetary and currency system through the devaluation of the gold dollar, and to insure to the people the full and unimpaired benefit of the new monetary system thereby created. Substantially all of the funded indebtedness of all industrial, railroad and utility corporations, upon whose successful operations and continued solvency both the domestic and foreign commerce of the country largely depends is evidenced by obligations containing gold clauses. The annual interest charges on all gold clause obligations, both public and private, estimated conservatively, aggregate approximately $4,750,000,000, to say nothing of recurring maturities of principal and the aggregate ultimately to be paid. Since the gold

content of the dollar has not only been reduced but gold coin withdrawn from circulation, payment therein is no longer possible. Instead, the contention is that the holders of such bonds should be paid substantially $1.70 in the existing currency for every $1.00 expressed in such obligation, whether for principal or interest. The result is, that while the new dollar is a dollar for every other purpose having full legal tender value as such, it has a value of but sixty cents in the discharge of such obligations. The issuers of such bonds must, therefore, collect their revenues in dollars having full legal tender value, but in the payment of their debts, treat such a dollar as worth but sixty cents for that purpose.

The question is not solely that of relieving the debt burden. The resulting dislocation and demoralization of the whole industrial structure is apparent. Consider, for example, the Baltimore and Ohio, the Respondent here. Under the Interstate Commerce Act that and every other railroad is limited in its charges to those prescribed or approved by the Interstate Commerce Commission. For the performance of its services it must accept the new dollar at its face value, but in the discharge of its payments, principal and interest, on its funded debt, the dollar so accepted is worth but sixty cents. The outstanding bonded indebtedness of the American railways alone was, on December 31, 1933 approximately $13,000,000,000.[4] If the Resolution was beyond the power of the Congress to enact, this figure is automatically raised by 70% to $22,000,000,000 in terms of existing money with a corresponding increase in the annual fixed charges, although, since the devaluation of the dollar, the general price level has increased less than 10

[4]47th Annual Report, Interstate Commerce Commission, p. 90 (Table III).

per cent.[5] As a matter of right, the railroads would theoretically be entitled to such increase in rates as might be necessary to absorb this additional debt burden, but the rates required for this purpose would, without doubt, cast a burden upon the commerce and industry of the country as a whole greater than it could bear.

The foregoing is but one of many practical illustrations of the extent to which the new monetary system, adopted by the Congress within the exercise of its indisputable powers, would be totally unsuited to the ordinary processes of commerce and industry and to the successful pursuit of interstate commerce by those engaged therein, unless accompanied by both the abrogation of pre-existing gold clause obligations and the prevention of the making of any such obligations in the future.

The commerce clause is one of those upon which the power of the Congress over the monetary system and currency rests, *Juilliard* v. *Greenman, supra.* In fact, it may be said without contradiction that the chief purpose for which currency is provided is to meet the requirements of commerce and industry, to which the monetary system and the currency must be suited and constitute an aid and not a hindrance. In regulating the monetary system, in the interests of the industry and commerce of the nation, Congress need not tie it inextricably to gold and render the monetary system subject to the fluctuations in the value of that commodity. Yet, if gold clauses remain enforceable, the Congressional powers are so circumscribed. This is clear because the billions upon billions of dollars of gold clauses were designed to protect the holder against any change in the monetary system which would have the effect,

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[5] "*Wholesale Prices*", Bulletins of Bureau of Labor Statistics, U. S. Dept. of Labor.

at the date of payment, of lessening the intrinsic value of the currency in relation to gold. The House Committee was right when it said that

> "These gold clauses render ineffective the power of the Government to create a currency and determine the value thereof."

The practical consequences of making the basic change in our monetary system believed to be appropriate and necessary for the protection of our foreign trade (see discussion, *post*) and for other purposes, through the devaluation of the dollar, without at the same time requiring the new dollar to be accepted, dollar for dollar, in the discharge of all obligations containing a gold clause, would have been such as to have afforded an effective deterrent to the exercise of the indisputable right of the Government so to do. Apparently fully conscious of this, petitioner in his brief (p. 9) naively suggests that

> "a decision in favor of the petitioner may *only* mean that the President by proclamation may have to revalue the gold unit back to its status under the Act of March 4, 1900. 31 Stat. 45, and where it was until January 31, 1934."

But the Congress may not be so fettered in the exercise of its power to make such basic changes in the monetary system as it believes appropriate to be made.

6. Gold clause obligations constituted an obstruction to the adjustment of the value of the dollar in the interest of our foreign commerce.

Among the findings made by the President in his Proclamation adjusting the gold content of the gold dollar were findings that

> "* * * the foreign commerce of the United States is adversely affected by reason of the depreciation in the value of the currencies of other governments in relation to the present standard value of gold",

and that

> "to protect the foreign commerce against the adverse effect of depreciated foreign currencies, it is necessary to fix the weight of the gold dollar at 15-5/21sts grains 9/10ths fine."

Indeed, there can be no doubt that the primary object of the reduction of the gold content of the gold dollar was to protect American foreign commerce.[6] As previously pointed out, the depreciation of foreign currencies in terms of gold had resulted in placing our currency at a premium over the currencies of foreign countries, and hence, in making it more difficult for citizens of such countries to buy American goods.

That it was legitimate for Congress to authorize an adjustment in the gold content of the gold dollar for the purpose of aiding American foreign commerce is indisputable. Congress not only has the power, but is under a

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[6]If inflation for domestic purposes had been the primary object, there were easier methods available and provided for in the Thomas amendment, to wit, the issuance of additional paper currency and the free coinage of silver. Reduction of the gold content of the gold dollar had for its primary object the removal of the high gold peg which had adversely affected our international trade. That such reduction was not primarily intended to be an inflationary measure is indicated by the fact that Congress had before it the experience of the United Kingdom wherein prices did not rise after that country went off the gold standard. In any event, the fact is that prices in this country, although rising since the reduction of the gold content of the dollar in January 1934, have not risen in inverse ratio to the extent of such reduction.

duty to establish a monetary system which permits our citizens to trade on favorable terms with citizens of foreign countries.

Gold clauses, if enforceable, would have precluded the attainment of such object, for to have adjusted the gold content of the gold dollar in the interest of our foreign commerce without rendering such clauses unenforceable would have been enormously to increase the already crushing domestic debt burden and risk a breakdown of our internal economy. We wish most emphatically to point out that Congress was not faced with this alternative because of any natural phenomenon but because of the artificial situation resulting from the insertion, as a matter of routine, in all large money obligations, of gold clauses, which really constituted nothing more nor less than attempts by private individuals to encroach upon the field delegated to Congress by the Constitution. There would seem to be no doubt but that Congress had the power to render nugatory such attempted encroachment upon the field delegated to it at any time, but it was particularly appropriate that it should do so at a time when the effect thereof was to circumscribe the exercise of powers conferred upon it by the Constitution for the attainment of legitimate objects.

7. In the last analysis, those who challenge the validity of the Resolution would deny to the Congress the choice of means by which to effect such change in the monetary system as was believed by it to be required by the needs of the people and their commerce, both foreign and domestic.

The Thomas Amendment empowered the President to increase the volume of the currency either (1) by the issue of additional paper money, (2) by the free coinage of

silver, or (3) by both, as well as to reduce the gold content of the dollar. The effect of the adoption of either (1) or (2), or both, unaccompanied by any reduction in the gold content of the dollar, might well have been to send gold coin of the then existing weight and fineness to a premium. It is, however, obvious that if a basic change in our monetary system had been accomplished by any one of these methods, the Resolution would have been within the powers of the Congress as a parity act and as one designed to maintain uniform legal tender values in all forms of currency and to preserve the stability of the national monetary system. The effect upon holders of gold clause obligations would have been quite as distasteful to them and in all probability more severe than that resulting from the devaluation of the dollar.

If the foregoing conclusions are sound, those who challenge the Resolution are thus forced to the position that while it would have been valid if either of the other powers conferred by the Thomas Amendment had been exercised, it is invalid because the basic change made in our monetary system under the powers conferred upon the President thereby took the form of a devaluation of the dollar. This is the same thing as saying that private individuals by pre-existing contract may limit the choice of means by which the Congress may effect a basic change in the monetary system. To state this proposition is to answer it. As said in *McCulloch* v. *Maryland, supra,* at pp. :

> "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional."

8. As related to the subsequent devaluation of the dollar, the Resolution was a valid exercise of all of the powers of the Congress over the monetary system and the currency, hereinbefore reviewed.

Considered in its relation to the subsequent devaluation of the dollar, therefore, the Resolution was within the powers of the Congress as the affirmative exercise of its power to regulate the value of money and fix its legal tender value for all purposes and as a means not merely appropriate but necessary to remove an obvious obstacle (1) to the free choice by the Congress of the means by which a reform or change in our monetary system should be brought about, and (2) to the adoption of such monetary system and currency as it believed to be suitable for the requirements of commerce and the people, and to insure to them the full and unimpaired benefit thereof. The power to provide a currency and to declare of what it shall consist and what its value shall be necessarily includes the power to revalue the unit of value from time to time either upwards or downwards. As previously pointed out, it has always been a prerogative of the sovereign to debase as well as to enhance the coinage. This power has existed from time immemorial. As a necessary concomitant thereof, the sovereign may require the acceptance of the new and debased coinage at the same legal tender value as that which it supersedes, irrespective of the existence of private contracts requiring payment in the old and more valuable coin. This was decided in the case of *Mixed Money, supra,* in which other precedents for the exercise of this power were collected.

Since the World War practically every important trading nation has gone off the gold standard or devalued its

unit of exchange. Nations other than the United States have passed appropriate measures for the abrogation of gold clauses similar in effect to the Resolution.[7] While the United States has a written Constitution, its sovereign powers within the legislative field delegated to it are equal to those of any other sovereign except as restrained by some express prohibition to be found in the Constitution itself. We shall hereafter discuss the effect of the due process clause upon this Resolution. Laying that question aside, however, the Resolution, when considered in relation to the subsequent basic change in the monetary system brought about by the devaluation of the dollar, was the exercise of a power of sovereignty repeatedly exercised by sovereigns in the past and more recently exercised by many sovereigns outside of the United States as a part of their monetary or recovery legislation, enacted to meet the conditions growing out of the War. This nation is possessed of equal power.

The Resolution, from whatever standpoint considered, is thus an exercise of the affirmative power of Congress over the monetary system and currency of the Nation, and was also an appropriate means for the removal of an obvious obstruction to the exercise of those powers, and to the performance of the duty, as well as to the exercise of the power of the Congress to provide the people with such monetary system as in its judgment was best suited to its needs, and to insure to them its full and unimpaired benefit.

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[7]Nussbaum, *Comparative and International Aspects of American Gold Clause Abrogation*, 44 Yale Law Journal, 53.

VI

THE RESOLUTION AS HERE APPLIED DOES NOT VIOLATE ANY RIGHT, TITLE, PRIVILEGE OR IMMUNITY SAFEGUARDED TO THE PETITIONER BY THE FEDERAL CONSTITUTION.

1. The Contract Impairment Clause, the Equal Protection Clause, and the Just Compensation Clause, have no bearing whatever on the case at bar.

The petitioner contends that the Resolution impairs the obligation of the bond contract, constitutes a taking of his property without just compensation, and denies him the equal protection of the laws. It is settled, however, that the provision in Article 10 of the Constitution prohibiting the impairment of the obligation of contracts is a prohibition against State action only (*Sinking Fund Cases*, 99 U. S. 700, 718; *New York* v. *United States*, 217 U. S. 591, 601), and the only equal protection clause in the Constitution is that found in the Fourteenth Amendment which, it is settled, also applies only to such action. Petitioner is therefore relying solely upon the Fifth Amendment which, so far as pertinent to the contentions raised by him, is as follows:

> "No person shall * * * be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use, without just compensation."

The petitioner's contention that the Resolution constitutes a taking of his property without just compensation (Brief, p. 55) is clearly an inadvertence. The final clause of the Fifth Amendment, quoted above, relates to the

taking of property *by the United States for public use.* Moreover, the Resolution, as applied to nullify gold clauses in private contracts, did not result in the "taking" of property by anyone, in the constitutional sense, but merely "frustrates", *pro tanto,* a purpose expressed in a private obligation wholly between private persons, found to be incompatible with the fulfilment of the legitimate needs and aims of the National Government.[1]

Petitioner's only possible constitutional claim, therefore, is one based upon the penultimate clause of the Fifth Amendment, and comes to this,—that he has been deprived of his liberty of contract, or of his property in the bond contract, without due process of law.

2. The Resolution, being a means appropriate to the exercise of a power conferred upon the Congress, and uniform in its application, is not an arbitrary, capricious or discriminatory interference with private rights of contract or property, and its application here, therefore, does not violate the due process clause of the Fifth Amendment.

We freely admit that Public Resolution No. 10, as here applied, restricts the use of private property and the right of private contract. That is not enough, without more, to bring the Resolution into conflict with the Fifth Amendment. Under principles long settled and not challenged by petitioner, it is clear that if the Resolution, as here applied, had for its end the accomplishment of a purpose within

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[1]*Omnia Commercial Co.* v. *United States,* 261 U. S. 502, 508-510; *Ruppert* v. *Caffey,* 251 U. S. 265, 303 (1920); *Union Bridge Co.* v. *United States,* 204 U. S. 364, 399-401 (1907); *Louisville Bridge Co.* v. *United States,* 242 U. S. 409, 421-423 (1917); *Reichelderfer* v. *Quinn,* 287 U. S. 315, 319. See, *The Legal Tender Cases,* 12 Wall. 457, 551.

the lawful constitutional power of the United States; was a means reasonably adapted to the exercise of that power; and was a *bona fide* non-discriminatory measure, then it has not deprived the petitioner of any right, title, privilege or immunity safeguarded to him by the Fifth Amendment to the Constitution.[2]

The preceding discussion in this brief has demonstrated that the Resolution was enacted in the legitimate exercise of functions expressly entrusted to the Federal Government by the Constitution and that the petitioner's rights, such as they were, were subject from their inception to the possible future exercise of lawful governmental authority. It has also been shown to be the established doctrine of this Court that in the exercise of such functions the United States may "consistently with the Fifth Amendment" impose restrictions upon private property "for a permitted purpose" which result in serious depreciation of its value (*Calhoun* v. *Massie*, 253 U. S. 170, 175), and that it may "for legitimate governmental purposes" (*Sinking Fund Cases*, 99 U. S. 700, 718) "destroy the worth of contracts" (*Legal Tender Cases*, 12 Wall 457, 484), since pre-existing private contracts do not limit "the sovereign right of the government" (*Calhoun* v. *Massie*, *supra*; *Omnia Co.* v. *United States*, *supra*, p. 509; *Louisville & Nashville R. R. Co.* v. *Mottley*, 219 U. S. 467, 484; *Union Dry Goods Co.* v. *Georgia Public Service Corporation*, 248 U. S. 372, 375-377), nor fetter its action within the field of the powers entrusted to it by the Constitution (*Philadelphia, Baltimore & Washington R. R.* v. *Schubert*, 224 U. S. 603; *Sproles* v. *Binford*, 286 U. S. 364, 390-391).

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[2]*The Legal Tender Cases*, 12 Wall. 457, 551; *Ling Su Fan* v. *United States*, 218 U. S. 302, 311; *Nebbia* v. *New York*, 291 U. S. 502, 525; *Magnano Co.* v. *Hamilton*, 292 U. S. 40, 44; *Graham* v. *Goodcell*, 282 U. S. 409, 431.

That the Resolution, as applied to private gold clause contracts, was a reasonable means having a substantial relation to the object sought to be attained by the Congress in pursuance of its policy with respect to the monetary system and the currency has, we believe, had ample demonstration in these pages, and admits of no doubt. The guaranty of due process in the Fifth Amendment, as this Court has repeatedly pointed out, demands no more than that the means selected by the Congress for the attainment of ends within its power shall have a real and substantial relation to the attainment of such ends (*McCullough* v. *Maryland*, 4 Wheat. 315, 419-421; *Ling Su Fan* v. *United States*, *supra*, 311; *Nebbia* v. *New York*, *supra*, 525).

That the Resolution was also a *bona fide* exertion of the constitutional power of the Congress and not a mere arbitrary interference with private rights of liberty or of contract under the cloak of an exercise of the power over the monetary system and the currency, has been made clear by the preceding discussion, which has established not merely the propriety, but the necessity, of this measure to the fulfilment of the legitimate governmental policy. This being so, the "collateral purposes or motives" of the Congress, if any, "are matters beyond the scope of judicial inquiry." (*Magnano Co.* v. *Hamilton*, *supra*; *McCray* v. *United States*, 195 U. S. 27, 56-59).

The suggestion that the Resolution is a part of currency measures adopted by the Seventy-third Congress with the purpose of transferring wealth from one class to another, and is therefore violative of the due process clause of the Fifth Amendment because constituting discriminatory class legislation, is answered by what is said above. The Resolution is for the accomplishment of a purpose within the express powers of the Congress; it is an appropriate

means having a real and substantial relation to the accomplishment of that purpose; it does not single out isolated persons or transactions for special treatment but deals with a customary and widespread practice, operating with equal effect upon the large number of persons in this country affected by it. There is no ground for a serious contention that the Resolution is so arbitrary and capricious in its classification as to offend the Fifth Amendment. *Graham* v. *Goodcell, supra,* 431.

Respectfully submitted,

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CARL A. DE GERSDORFF,
Of Counsel.

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Supreme Court of the United States

OCTOBER TERM, 1934.

No. 270

NORMAN C. NORMAN,

Petitioner,

vs.

THE BALTIMORE AND OHIO RAILROAD COMPANY,

Respondent.

APPENDIX TO RESPONDENT'S BRIEF

FREDERICK H. WOOD,
Counsel for Respondent.

CARL A. DE GERSDORFF,
Of Counsel.

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APPENDIX

AN ACT TO DEFINE, REGULATE AND PUNISH TRADING WITH THE ENEMY AND FOR OTHER PURPOSES (October 6, 1917, c. 106, § 5, 40 Stat. 415; Sept. 24, 1918, c. 176, § 5, 40 Stat. 966)

* * * * * * * * * *

(b) That the President may investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange and the export, hoarding, melting, or earmarkings of gold or silver coin or bullion or currency, transfers of credit in any form (other than credits relating solely to transactions to be executed wholly within the United States), and transfers of evidences of indebtedness or of the ownership of property between the United States and any foreign country, whether enemy, ally of enemy, or otherwise, or between residents of one or more foreign countries, by any person within the United States; * * *."

PROCLAMATION OF THE PRESIDENT, MARCH 6, 1933
(48 Stat., "Proclamations of the President of the United States", p. 1)

WHEREAS there have been heavy and unwarranted withdrawals of gold and currency from our banking institutions for the purpose of hoarding; and

WHEREAS continuous and increasingly extensive speculative activity abroad in foreign exchange has resulted in severe drains on the Nation's stocks of gold; and

WHEREAS these conditions have created a national emergency; and

WHEREAS it is in the best interests of all bank depositors that a period of respite be provided with a view to preventing further hoarding of coin, bullion or currency or speculation in foreign exchange and permitting the application of appropriate measures to protect the interests of our people; and

WHEREAS it is provided in Section 5 (*b*) of the Act of October 6, 1917 (40 Stat. L. 411), as amended, "That the President may investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange and the export, hoarding, melting, or earmarkings of gold or silver coin or bullion or currency * * *"; and

WHEREAS it is provided in Section 16 of the said Act "that whoever shall willfully violate any of the provisions of this Act or of any license, rule, or regulation issued thereunder, and whoever shall willfully violate, neglect, or refuse to comply with any order of the President issued in compliance with the provisions of this Act, shall, upon con-

viction, be fined not more than $10,000, or, if a natural person, imprisoned for not more than ten years, or both; * * *";

NOW, THEREFORE, I, Franklin D. Roosevelt, President of the United States of America, in view of such national emergency and by virtue of the authority vested in me by said Act and in order to prevent the export, hoarding, or earmarking of gold or silver coin or bullion or currency, do hereby proclaim, order, direct and declare that from Monday, the sixth day of March, to Thursday, the ninth day of March, Nineteen Hundred and Thirty Three, both dates inclusive, there shall be maintained and observed by all banking institutions and all branches thereof located in the United States of America, including the territories and insular possessions, a bank holiday, and that during said period all banking transactions shall be suspended. During such holiday, excepting as hereinafter provided, no such banking institution or branch shall pay out, export, earmark, or permit the withdrawal or transfer in any manner or by any device whatsoever, of any gold or silver coin or bullion or currency or take any other action which might facilitate the hoarding thereof; nor shall any such banking institution or branch pay out deposits, make loans or discounts, deal in foreign exchange, transfer credits from the United States to any place abroad, or transact any other banking business whatsoever.

During such holiday, the Secretary of the Treasury, with the approval of the President and under such regulations as he may prescribe, is authorized and empowered (*a*) to permit any or all of such banking institutions to perform any or all of the usual banking functions, (*b*) to direct, require or permit the issuance of clearing house certificates or other evidences of claims against assets of

banking institutions, and (*c*) to authorize and direct the creation in such banking institutions of special trust accounts for the receipt of new deposits which shall be subject to withdrawal on demand without any restriction or limitation and shall be kept separately in cash or on deposit in Federal Reserve Banks or invested in obligations of the United States.

As used in this order the term "banking institutions" shall include all Federal Reserve banks, national banking associations, banks, trust companies, savings banks, building and loan associations, credit unions, or other corporations, partnerships, associations or persons, engaged in the business of receiving deposits, making loans, discounting business paper, or transacting any other form of banking business.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done in the City of Washington this 6th day of March —1 A. M. in the year of our Lord One Thousand Nine Hundred and Thirty-three, and of the Independence of the United States the One Hundred and Fifty-seventh.

[SEAL] FRANKLIN D. ROOSEVELT

By the President:

CORDELL HULL,
Secretary of State.

[No. 2039]

INSTRUCTIONS BY SECRETARY OF THE TREASURY TO TREASURER OF THE UNITED STATES, DATED MARCH 6, 1933

THE HONORABLE THE TREASURER OF
THE UNITED STATES.

SIR: The President of the United States has issued an Executive order declaring a complete bank holiday in the United States for the period Monday, March 6, to Thursday, March 9, 1933, both dates inclusive, subject to such exceptions as may be permitted under regulations to be prescribed by the Secretary of the Treasury with the approval of the President.

During the continuance of such bank holiday, unless otherwise directed, you will observe the following instructions:

(1) Payments in gold in any form will be made only under license issued by the Secretary of the Treasury. This does not prohibit the deposit of gold and the usual payment therefor.

(2) Pay, as usual, all checks drawn on the Treasurer of the United States, but not in gold. When requested you are authorized to ship paper currency, other than gold certificates, in payment of checks.

(3) Continue the usual currency transactions between the Treasury and the Federal Reserve Banks and branches.

Respectfully,

(Signed) W. H. WOODIN,
Secretary of the Treasury.

Approved: March 6, 1933.

(Signed) FRANKLIN D. ROOSEVELT,
The White House.

INSTRUCTIONS BY SECRETARY OF THE TREASURY TO DIRECTOR OF THE MINT, DATED MARCH 6, 1933

THE HONORABLE THE DIRECTOR OF THE MINT.

SIR: The President of the United States has issued an Executive Order declaring a complete bank holiday in the United States for the period Monday, March 6, to Thursday, March 9, 1933, both dates inclusive, subject to such exceptions as may be permitted under regulations to be prescribed by the Secretary of the Treasury with the approval of the President.

During the continuance of such bank holiday, unless otherwise directed, you are requested to instruct all mint and assay offices to pay gold in any form only under license issued by the Secretary of the Treasury. This does not prohibit the deposit of gold and the usual payment therefor.

Respectfully,

(Signed) W. H. WOODIN,
Secretary of the Treasury.

Approved: March 6, 1933.

(Signed) FRANKLIN D. ROOSEVELT,
The White House.

EMERGENCY BANKING ACT OF MARCH 9, 1933, 48 Stat. 1

AN ACT To provide relief in the existing national emergency in banking, and for other purposes:

Be it enacted by the Senate and House of Reprsentatives of the United States of America in Congress assembled, That the Congress hereby declares that a serious emergency exists and that it is imperatively necessary speedily to put into effect remedies of uniform national application.

TITLE I

SECTION 1. The actions, regulations, rules, licenses, orders and proclamations heretofore or hereafter taken, promulgated, made, or issued by the President of the United States or the Secretary of the Treasury since March 4, 1933, pursuant to the authority conferred by subdivision (b) of section 5 of the Act of October 6, 1917, as amended, are hereby approved and confirmed.

SEC. 2. Subdivision (b) of section 5 of the Act of October 6, 1917 (40 Stat. L. 411), as amended, is hereby amended to read as follows:

"(b) During time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange, transfers of credit between or payments by banking institutions as defined by the President, and export, hoarding, melting, or earmarking of gold or silver coin or bullion or currency, by any person within the United States or any

place subject to the jurisdiction thereof; and the President may require any person engaged in any transaction referred to in this subdivision to furnish under oath, complete information relative thereto, including the production of any books of account, contracts, letters or other papers in connection therewith in the custody or control of such person, either before or after such transaction is completed. Whoever willfully violates any of the provisions of this subdivision or of any license, order, rule or regulation issued thereunder, shall, upon conviction, be fined not more than $10,000, or if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both. As used in this subdivision the term 'person' means an individual, partnership, association, or corporation."

SEC. 3. Section 11 of the Federal Reserve Act is amended by adding at the end thereof the following new subsection:

"(n) Whenever in the judgment of the Secretary of the Treasury such action is necessary to protect the currency system of the United States, the Secretary of the Treasury, in his discretion, may require any or all individuals, partnerships, associations and corporations to pay and deliver to the Treasurer of the United States any or all gold coin, gold bullion, and gold certificates owned by such individuals, partnerships, associations and corporations. Upon receipt of such gold coin, gold bullion or gold certificates, the Secretary of the Treasury shall pay therefor an equivalent amount of any other form of coin or currency coined or issued under the laws of the United States. The Secretary of the Treasury shall pay all costs of the trans-

portation of such gold bullion, gold certificates, coin, or currency, including the cost of insurance, protection, and such other incidental costs as may be reasonably necessary. Any individual, partnership, association or corporation failing to comply with any requirement of the Secretary of the Treasury made under this subsection shall be subject to a penalty equal to twice the value of the gold or gold certificates in respect of which such failure occurred, and such penalty may be collected by the Secretary of the Treasury by suit or otherwise."

SEC. 4. In order to provide for the safer and more effective operation of the National Banking System and the Federal Reserve System, to preserve for the people the full benefits of the currency provided for by the Congress through the National Banking System and the Federal Reserve System, and to relieve interstate commerce of the burdens and obstructions resulting from the receipt on an unsound or unsafe basis of deposits subject to withdrawal by check, during such emergency period as the President of the United States by proclamation may prescribe, no member bank of the Federal Reserve System shall transact any banking business except to such extent and subject to such regulations, limitations, and restrictions as may be prescribed by the Secretary of the Treasury, with the approval of the President. Any individual, partnership, corporation, or association, or any director, officer or employee thereof, violating any of the provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $10,000 or, if a natural person, may, in addition to such fine, be imprisoned for a term not exceeding ten years. Each day that any such violation continues shall be deemed a separate offense.

* * * * *

PROCLAMATION OF THE PRESIDENT, MARCH 9, 1933
(48 Stat., "Proclamations of the President", p. 3)

WHEREAS, on March 6, 1933, I, FRANKLIN D. ROOSEVELT, President of the United States of America, by Proclamation declared the existence of a national emergency and proclaimed a bank holiday extending from Monday the 6th day of March to Thursday the 9th day of March, 1933, both dates inclusive, in order to prevent the export, hoarding or earmarking of gold or silver coin, or bullion or currency, or speculation in foreign exchange; and

WHEREAS, under the Act of March 9, 1933, all Proclamations heretofore or hereafter issued by the President pursuant to the authority conferred by section 5 (*b*) of the Act of October 6, 1917, as amended, are approved and confirmed; and

WHEREAS, said national emergency still continues, and it is necessary to take further measures extending beyond March 9, 1933, in order to accomplish such purposes;

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, in view of such continuing national emergency and by virtue of the authority vested in me by Section 5(*b*) of the Act of October 6, 1917 (40 Stat. L., 411) as amended by the Act of March 9, 1933, do hereby proclaim, order, direct and declare that all the terms and provisions of said Proclamation of March 6, 1933, and the regulations and orders issued thereunder are hereby continued in full force and effect until further proclamation by the President.

IN WITNESS WHEREOF I have hereunto set my hand and have caused the seal of the United States to be affixed.

Done in the District of Columbia, this 9th day of March, in the Year of our Lord One Thousand Nine Hundred and Thirty-three, and of the Independence of the United States the One Hundredth and Fifty-seventh.

FRANKLIN D. ROOSEVELT

By the President:

CORDELL HULL
Secretary of State.

[No. 2040]

EXECUTIVE ORDER No. 6073, MARCH 10, 1933

By virtue of the authority vested in me by Section 5(*b*) of the Act of October 6, 1917 (40 Stat. L., 411) as amended by the Act of March 9, 1933 and by Section 4 of the said Act of March 9, 1933, and by virtue of all other authority vested in me, I hereby issue the following executive order.

The Secretary of the Treasury is authorized and empowered under such regulations as he may prescribe to permit any member bank of the Federal Reserve System and any other banking institution organized under the laws of the United States to perform any or all of their usual banking functions, except as otherwise prohibited.

The appropriate authority having immediate supervision of banking institutions in each State or any place subject to the jurisdiction of the United States is authorized and empowered under such regulations as such authority may prescribe to permit any banking institution in such State or place, other than banking institutions covered by the foregoing paragraph, to perform any or all of their usual banking functions, except as otherwise prohibited.

All banks which are members of the Federal Reserve System, desiring to reopen for the performance of all usual and normal banking functions, except as otherwise prohibited, shall apply for a license therefor to the Secretary of the Treasury. Such application shall be filed immediately through the Federal Reserve Banks. The Federal Reserve Bank shall then transmit such applications to the Secretary of the Treasury. Licenses will be issued by the Federal Reserve Bank upon approval of the Secretary of the Treasury. The Federal Reserve Banks are hereby designated as agents of the Secretary of the Treasury for the

receiving of application and the issuance of licenses in his behalf and upon his instructions.

Until further order, no individual, partnership, association, or corporation, including any banking institution, shall export or otherwise remove or permit to be withdrawn from the United States or any place subject to the jurisdiction thereof any gold coin, gold bullion, or gold certificates, except in accordance with regulations prescribed by or under license issued by the Secretary of the Treasury.

No permission to any banking institution to perform any banking functions shall authorize such institution to pay out any gold coin, gold bullion or gold certificates except as authorized by the Secretary of the Treasury, nor to allow withdrawal of any currency for hoarding, nor to engage in any transaction in foreign exchange except such as may be undertaken for legitimate and normal business requirements, for reasonable traveling and other personal requirements, and for the fulfillment of contracts entered into prior to March 6, 1933.

Every Federal Reserve Bank is authorized and instructed to keep itself currently informed as to transactions in foreign exchange entered into or consummated within its district and shall report to the Secretary of the Treasury all transactions in foreign exchange which are prohibited.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE,
March 10, 1933.

EXECUTIVE ORDER No. 6102, APRIL 5, 1933[1]

By virtue of the authority vested in me by Section 5 (b) of the Act of October 6, 1917, as amended by Section 2 of the Act of March 9, 1933, entitled "An Act to provide relief in the existing national emergency in banking, and for other purposes", in which amendatory Act Congress declared that a serious emergency exists, I, FRANKLIN D. ROOSEVELT, President of the United States of America, do declare that said national emergency still continues to exist and pursuant to said section do hereby prohibit the hoarding of gold coin, gold bullion, and gold certificates within the continental United States by individuals, partnerships, associations and corporations and hereby prescribe the following regulations for carrying out the purposes of this order:

SECTION 1. For the purposes of this regulation, the term "hoarding" means the withdrawal and withholding of gold coin, gold bullion, or gold certificates from the recognized and customary channels of trade. The term "person" means any individual, partnership, association or corporation.

SEC. 2. All persons are hereby required to deliver on or before May 1, 1933, to a Federal Reserve bank or a branch or agency thereof or to any member bank of the Federal Reserve System all gold coin, gold bullion and gold certificates now owned by them or coming into their ownership on or before April 28, 1933, except the following:

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[1]Revoked by Executive Order of August 28, 1933 (p. 26, *post*).

(*a*) Such amount of gold as may be required for legitimate and customary use in industry, profession or art within a reasonable time, including gold prior to refining and stocks of gold in reasonable amounts for the usual trade requirements of owners mining and refining such gold.

(*b*) Gold coin and gold certificates in an amount not exceeding in the aggregate $100.00 belonging to any one person; and gold coins having a recognized special value to collectors of rare and unusual coins.

(*c*) Gold coin and bullion earmarked or held in trust for a recognized foreign government or foreign central bank or the Bank for International Settlements.

(*d*) Gold coin and bullion licensed for other proper transactions (not involving hoarding) including gold coin and bullion imported for reexport or held pending action on applications for export licenses.

SEC. 3. Until otherwise ordered any person becoming the owner of any gold coin, gold bullion, or gold certificates after April 28, 1933, shall, within three days after receipt thereof, deliver the same in the manner prescribed in Section 2; unless such gold coin, gold bullion or gold certificates are held for any of the purposes specified in paragraphs (*a*), (*b*), or (*c*) of Section 2; or unless such gold coin or gold bullion is held for purposes specified in paragraph (*d*) of Section 2 and the person holding it is, with respect to such gold coin or bullion, a licensee or applicant for license pending action thereon.

SEC. 4. Upon receipt of gold coin, gold bullion, or gold certificates delivered to it in accordance with Sections 2 or

3, the Federal Reserve bank or member bank will pay therefor an equivalent amount of any other form of coin or currency coined or issued under the laws of the United States.

SEC. 5. Member banks shall deliver all gold coin, gold bullion, and gold certificates owned or received by them (other than as exempted under the provisions of Section 2) to the Federal Reserve banks of their respective districts and receive credit or payment therefor.

SEC. 6. The Secretary of the Treasury, out of the sum made available to the President by Section 501 of the Act of March 9, 1933, will in all proper cases pay the reasonable costs of transportation of gold coin, gold bullion, or gold certificates delivered to a member bank or Federal Reserve bank in accordance with Sections 2, 3, or 5 hereof, including the cost of insurance, protection, and such other incidental costs as may be necessary, upon production of satisfactory evidence of such costs. Voucher forms for this purpose may be procured from Federal Reserve banks.

SEC. 7. In cases where the delivery of gold coin, gold bullion or gold certificates by the owners thereof within the time set forth above will involve extraordinary hardship or difficulty, the Secretary of the Treasury may, in his discretion, extend the time within which such delivery must be made. Applications for such extensions must be made in writing under oath, addressed to the Secretary of the Treasury and filed with a Federal reserve bank. Each application must state the date to which the extension is desired, the amount and location of the gold coin, gold bullion and gold certificates in respect of which such applica-

tion is made and the facts showing extension to be necessary to avoid extraordinary hardship or difficulty.

SEC. 8. The Secretary of the Treasury is hereby authorized and empowered to issue such further regulations as he may deem necessary to carry out the purposes of this order and to issue licenses thereunder, through such officers or agencies as he may designate, including licenses permitting the Federal reserve banks and member banks of the Federal Reserve System, in return for an equivalent amount of other coin, currency or credit, to deliver, earmark or hold in trust gold coin and bullion to or for persons showing the need for the same for any of the purposes specified in paragraphs (a), (c) and (d) of Section 2 of these regulations.

SEC. 9. Whoever willfully violates any provision of this Executive Order or of these regulations or of any rule, regulation or license issued thereunder may be fined not more than $10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in any such violation may be punished by a like fine, imprisonment, or both.

This order and these regulations may be modified or revoked at any time.

FRANKLIN D. ROOSEVELT

THE WHITE HOUSE,
April 5, 1933.

EXECUTIVE ORDER No. 6111, APRIL 20, 1933[2]

By virtue of the authority vested in me by Section 5(b) of the Act of October 6, 1917, as amended by Section 2 of the Act of March 9, 1933, entitled "An Act to provide relief in the existing national emergency in banking, and for other purposes," in which amendatory Act Congress declared that a serious emergency exists, I, FRANKLIN D. ROOSEVELT, President of the United States of America, do declare that said national emergency still continues to exist and pursuant to said section and by virtue of all other authority vested in me, do hereby issue the following executive order:

1. Until further order, the earmarking for foreign account and the export of gold coin, gold bullion or gold certificates from the United States or any place subject to the jurisdiction thereof are hereby prohibited, except that the Secretary of the Treasury, in his discretion and subject to such regulations as he may prescribe, may issue licenses authorizing the export of gold coin and bullion (a) earmarked or held in trust for a recognized foreign government or foreign central bank or the Bank for International Settlements, (b) imported for reexport or gold in reasonable amounts for usual trade requirements of refiners importing gold bearing materials under agreement to export gold, (c) actually required for the fulfilment of any contract entered into prior to the date of this order, by an applicant who in obedience to the Executive Order of April 5, 1933 has delivered gold coin, gold bullion or gold certificates, and (d) with the approval of the President, for

[2]Revoked by Executive Order of August 28, 1933 (p. 26, *post*).

transactions which he may deem necessary to promote the public interest.

2. Until further order, the Secretary of the Treasury is authorized, through any agency that he may designate, to investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange, transfers of credit from any banking institution within the United States or any place subject to the jurisdiction thereof to any foreign branch or office of such banking institution or to any foreign bank or banker, and the export or withdrawal of currency from the United States or any place subject to the jurisdiction of the United States, by any individual, partnership, association, or corporation within the United States or any place subject to the jurisdiction thereof; and the Secretary of the Treasury may require any individual, partnership, association, or corporation engaged in any transaction referred to herein to furnish under oath, complete information relative thereto, including the production of any books of account, contracts, letters or other papers, in connection therewith in the custody or control of such individual, partnership, association, or corporation either before or after such transaction is completed.

3. The provisions relating to foreign exchange transactions contained in the Executive Order of March 10, 1933, shall remain in full force and effect except as amended or supplemented by this order and by regulations issued hereunder.

4. Applicants who have gold coin, gold bullion or gold certificates in their possession, or who in obedience to the

Executive Order of April 5, 1933 have delivered gold coin, gold bullion or gold certificates shall be entitled to licenses as provided in Section 8 of said Executive Order for amounts not exceeding the equivalent of such coin, bullion or certificates held or delivered. The Secretary may in his discretion issue or decline to issue any other licenses under said Executive Order, which shall in all other respects remain in full force and effect.

5. Whoever willfully violates any provision of this Executive Order or of any rule, regulation or license issued thereunder may be fined not more than $10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in any such violation may be punished by a like fine, imprisonment, or both.

This order may be modified or revoked at any time.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE,
April 20, 1933.

INSTRUCTIONS BY SECRETARY OF TREASURY TO GOVERNORS OF FEDERAL RESERVE BANKS, DATED APRIL 28, 1933

To Governors, Federal Reserve Banks—

Boston, Mass.
New York, N. Y.
Philadelphia, Pa.
Cleveland, Ohio
Richmond, Va.
Atlanta, Ga.
Chicago, Ill.
St. Louis, Mo.
Minneapolis, Minn.
Kansas City, Mo.
Dallas, Tex.
San Francisco, Calif.

Until further notice the Secretary of the Treasury will grant no licenses for the acquisition of gold, gold coin or bullion by persons making application for the same under the Executive Order of April 5, 1933, for the purpose of meeting maturing obligations calling for payment in gold coin or bullion, within the United States or elsewhere, except where such applicants have surrendered gold coin, gold bullion or gold certificates in obedience to the Executive Order of April 5, 1933.

BALLANTINE
(Initialed) G. A. B.

AGRICULTURAL ADJUSTMENT ACT OF MAY 12, 1933
(48 Stat. 51-53)

* * * * * *

TITLE III—FINANCING—AND EXERCISING POWER CONFERRED BY SECTION 8 OF ARTICLE I OF THE CONSTITUTION: TO COIN MONEY AND TO REGULATE THE VALUE THEREOF

SEC. 43. Whenever the President finds, upon investigation, that (1) the foreign commerce of the United States is adversely affected by reason of the depreciation in value of the currency of any other government or governments in relation to the present standard value of gold, or (2) action under this section is necessary in order to regulate and maintain the parity of currency issues of the United States, or (3) an economic emergency requires an expansion of credit, or (4) an expansion of credit is necessary to secure by international agreement a stabilization at proper levels of the currencies of various governments, the President is authorized, in his discretion—

(a) To direct the Secretary of the Treasury to enter into agreements with the several Federal Reserve banks and with the Federal Reserve Board whereby the Federal Reserve Board will, and it is hereby authorized to, notwithstanding any provisions of law or rules and regulations to the contrary, permit such reserve banks to agree that they will, (1) conduct, pursuant to existing law, throughout specified periods, open market operations in obligations of the United States Government or corporations in which the United States is the majority stockholder, and (2) purchase directly and hold in portfolio for an agreed period or

periods of time Treasury bills or other obligations of the United States Government in an aggregate sum of $3,000,000,000 in addition to those they may then hold, unless prior to the termination of such period or periods the Secretary shall consent to their sale. No suspension of reserve requirements of the Federal Reserve banks, under the terms of section 11(c) of the Federal Reserve Act, necessitated by reason of operations under this section, shall require the imposition of the graduated tax upon any deficiency in reserves as provided in said section 11(c). Nor shall it require any automatic increase in the rates of interest or discount charged by any Federal Reserve bank, as otherwise specified in that section. The Federal Reserve Board, with the approval of the Secretary of the Treasury, may require the Federal Reserve banks to take such action as may be necessary, in the judgment of the Board and of the Secretary of the Treasury, to prevent undue credit expansion.

(b) If the Secretary, when directed by the President, is unable to secure the assent of the several Federal Reserve banks and the Federal Reserve Board to the agreements authorized in this section, or if operations under the above provisions prove to be inadequate to meet the purposes of this section, or if for any other reason additional measures are required in the judgment of the President to meet such purposes, then the President is authorized—

(1) To direct the Secretary of the Treasury to cause to be issued in such amount or amounts as he may from time to time order, United States notes, as provided in the Act entitled "An Act to authorize the issue of United States notes and for the redemption of funding thereof and

for funding the floating debt of the United States", approved February 25, 1862, and Acts supplementary thereto and amendatory thereof, in the same size and of similar color to the Federal Reserve notes heretofore issued and in denominations of $1, $5, $10, $20, $50, $100, $500, $1,000, and $10,000; but notes issued under this subsection shall be issued only for the purpose of meeting maturing Federal obligations to repay sums borrowed by the United States and for purchasing United States bonds and other interest-bearing obligations of the United States: *Provided*, That when any such notes are used for such purpose the bond or other obligation so acquired or taken up shall be retired and canceled. Such notes shall be issued at such times and in such amounts as the President may approve but the aggregate amount of such notes outstanding at any time shall not exceed $3,000,000,000. There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, an amount sufficient to enable the Secretary of the Treasury to retire and cancel 4 per centum annually of such outstanding notes, and the Secretary of the Treasury is hereby directed to retire and cancel annually 4 per centum of such outstanding notes. Such notes and all other coins and currencies heretofore or hereafter coined or issued by or under the authority of the United States shall be legal tender for all debts public and private.

(2) By proclamation to fix the weight of the gold dollar in grains nine-tenths fine and also to fix the weight of the silver dollar in grains nine-tenths fine at a definite ratio in relation to the gold dollar at such amounts as he finds necessary from his investigation to stabilize domestic prices or to protect the foreign commerce against the adverse effect of depreciated foreign currencies, and to provide for

the unlimited coinage of such gold and silver at the ratio so fixed, or in case the Government of the United States enters into an agreement with any government or governments under the terms of which the ratio between the value of gold and other currency issued by the United States and by any such government or governments is established, the President may fix the weight of the gold dollar in accordance with the ratio so agreed upon, and such gold dollar, the weight of which is so fixed, shall be the standard unit of value, and all forms of money issued or coined by the United States shall be maintained at a parity with this standard and it shall be the duty of the Secretary of the Treasury to maintain such parity, but in no event shall the weight of the gold dollar be fixed so as to reduce its present weight by more than 50 per centum.

SEC. 44. The Secretary of the Treasury, with the approval of the President, is hereby authorized to make and promulgate rules and regulations covering any action taken or to be taken by the President under subsection (a) or (b) of section 43.

* * * * * *

EXECUTIVE ORDER No. 6260, AUGUST 28, 1933

By virtue of the authority vested in me by Section 5 (b) of the Act of October 6, 1917, as amended by Section 2 of the Act of March 9, 1933, entitled "An Act to Provide Relief in the Existing National Emergency in Banking and for other Purposes", I, FRANKLIN D. ROOSEVELT, PRESIDENT OF THE UNITED STATES OF AMERICA, do declare that a period of national emergency exists, and by virtue of said authority and of all other authority vested in me, do hereby prescribe the following provisions for the investigation and regulation of the hoarding, earmarking, and export of gold coin, gold bullion, and gold certificates by any person within the United States or any place subject to the jurisdiction thereof; and for the investigation and regulation of transactions in foreign exchange and transfers of credit and the export or withdrawal of currency from the United States or any place subject to the jurisdiction thereof by any person within the United States or any place subject to the jurisdiction thereof.

SECTION 2. *Definitions.*—As used in this Order the term "person" means an individual, partnership, association, or corporation; and the term "the United States" means the United States and any place subject to the jurisdiction thereof.

SECTION 3. *Returns.*—Within fifteen days from the date of this Order every person in possession of and every person owning gold coin, gold bullion, or gold certificates shall make under oath and file as hereinafter provided a return to the Secretary of the Treasury containing true and complete information relative thereto, including the name and address of the person making the return; the

kind and amount of such coin, bullion, or certificates held, and the location thereof; if held for another, the capacity in which held and the person for whom held, together with the post office address of such person; and the nature of the transaction requiring the holding of such coin, bullion, or certificates, and a statement explaining why such transaction cannot be carried out by the use of currency other than gold certificates; provided that no returns are required to be filed with respect to—

(*a*) Gold coin, gold bullion, and gold certificates in an amount not exceeding in the aggregate $100 belonging to any one person;

(*b*) Gold coin having a recognized special value to collectors of rare and unusual coin;

(*c*) Gold coin, gold bullion, and gold certificates acquired or held under a license heretofore granted by or under authority of the Secrtary of the Treasury; and

(*d*) Gold coin, gold bullion, and gold certificates owned by Federal reserve banks.

Such return required to be made by an individual shall be filed with the Collector of Internal Revenue for the collection district in which such individual resides, or, if such individual has no legal residence in the United States, then with the Collector of Internal Revenue at Baltimore, Maryland. Such return required to be made by a partnership, association, or corporation shall be filed with the Collector of Internal Revenue of the collection district in which is located the principal place of business or principal office or agency of such partnership, association, or corporation, or if it has no principal place of business or principal office or agency in the United States, then with the Collector of

Internal Revenue at Baltimore, Maryland. Such return required to be made by an individual residing in Alaska shall be filed with the Collector of Internal Revenue at Seattle, Washington. Such return required to be made by a partnership, association, or corporation having its principal place of business or principal office or agency in Alaska shall be filed with the Collector of Internal Revenue at Seattle, Washington.

The Secretary of the Treasury may grant a reasonable extension of time for filing a return, under such rules and regulations as he shall prescribe. No such extension shall be for more than forty-five days from the date of this Executive Order. An extension granted hereunder shall be deemed a license to hold for a period ending fifteen days after the expiration of the extension.

The returns required to be made and filed under this Section shall constitute public records; but they shall be open to public inspection only upon order of the President and under rules and regulations prescribed by the Secretary of the Treasury.

A return made and filed in accordance with this Section by the owner of the gold coin, gold bullion, and gold certificates described therein, or his duly authorized agent, shall be deemed an application for the issuance under Section 5 hereof of a license to hold such coin, bullion, and certificates.

SECTION 4. *Acquisition of gold coin and gold bullion.*— No person other than a Federal reserve bank shall after the date of this Order acquire in the United States any gold coin, gold bullion, or gold certificates except under license therefor issued pursuant to this Executive Order, provided that member banks of the Federal Reserve System may accept delivery of such coin, bullion, and certificates for sur-

render promptly to a Federal reserve bank, and provided further that persons requiring gold for use in the industry, profession, or art in which they are regularly engaged may replenish their stocks of gold up to an aggregate amount of $100, by acquisitions of gold bullion held under licenses issued under Section 5 (b), without necessity of obtaining a license for such acquisitions.

The Secretary of the Treasury, subject to such further regulations as he may prescribe, shall issue licenses authorizing the acquisition of

(*a*) Gold coin or gold bullion which the Secretary is satisfied is required for a necessary and lawful transaction for which currency other than gold certificates cannot be used, by an applicant who establishes that since March 9, 1933, he has surrendered an equal amount of gold coin, gold bullion, or gold certificates to a banking institution in the continental United States or to the Treasurer of the United States;

(*b*) Gold coin or gold bullion which the Secretary is satisfied is required by an applicant who holds a license to export such an amount of gold coin or gold bullion issued under subdivisions (*c*) or (*d*) of Section 6 hereof, and

(*c*) Gold bullion which the Secretary or such agency as he may designate is satisfied is required for legitimate and customary use in industry, profession, or art by an applicant regularly engaged in such industry, profession, or art, or in the business of furnishing gold therefor.

Licenses issued pursuant to this Section shall authorize the holder to acquire gold coin and gold bullion only from the sources specified by the Secretary of the Treasury in regulations issued hereunder.

SECTION 5. *Holding of gold coin, gold bullion, and gold certificates.*—After thirty days from the date of this Order no person shall hold in his possession or retain any interest, legal or equitable, in any gold coin, gold bullion, or gold certificates situated in the United States and owned by any person subject to the jurisdiction of the United States, except under license therefor issued pursuant to this Executive Order; provided, however, that licenses shall not be required in order to hold in possession or retain an interest in gold coin, gold bullion, or gold certificates with respect to which a return need not be filed under Section 3 hereof.

The Secretary of the Treasury, subject to such further regulations as he may prescribe, shall issue licenses authorizing the holding of

(*a*) Gold coin, gold bullion, and gold certificates, which the Secretary is satisfied are required by the person owning the same for necessary and lawful transactions for which currency, other than gold certificates, cannot be used;

(*b*) Gold bullion which the Secretary, or such agency as he may designate, is satisfied is required for legitimate and customary use in industry, profession, or art by a person regularly engaged in such industry, profession, or art or in the business of furnishing gold therefor;

(*c*) Gold coin and gold bullion earmarked or held in trust since before April 20, 1933, for a recognized foreign government or foreign central bank or the Bank for International Settlements; and

(*d*) Gold coin and gold bullion imported for reexport or held pending action upon application for export licenses.

SECTION 6. *Earmarking and export of gold coin and gold bullion.*—After the date of this Order no person shall

earmark or export any gold coin, gold bullion, or gold certificates from the United States, except under license therefor issued by the Secretary of the Treasury pursuant to the provisions of this Order.

The Secretary of the Treasury, in his discretion and subject to such regulations as he may prescribe, may issue licenses authorizing—

(*a*) The export of gold coin or gold bullion earmarked or held in trust since before April 20, 1933, for a recognized foreign government, foreign central bank, or the Bank for International Settlements;

(*b*) The export of gold, (i) imported for reexport, (ii) refined from gold-bearing materials imported by the applicant under an agreement to export gold, or (iii) in bullion containing not more than five ounces of gold per ton;

(*c*) The export of gold coin or gold bullion to the extent actually required for the fulfillment of a contract entered into by the applicant prior to April 20, 1933; but not in excess of the amount of the gold coin, gold bullion, and gold certificates surrendered by the applicant on or after March 9, 1933, to a banking institution in the continental United States or to the Treasurer of the United States; and

(*d*) The earmarking for foreign account and/or export of gold coin or gold bullion, with the approval of the President, for transactions which the Secretary of the Treasury may deem necessary to promote the public interest.

SECTION 7. *United States Possessions—Shipments Thereto.*—The provisions of Sections 3 and 5 of this Order shall not apply to gold coin, gold bullion, or gold certificates which are situated in the Philippine Islands, American Sa-

moa, Guam, Hawaii, Panama Canal Zone, Puerto Rico, or the Virgin Islands of the United States, and are owned by a person not domiciled in the continental United States. The provisions of Section 4 shall not apply to acquisitions by persons within the Philippine Islands, American Samoa, Guam, Hawaii, Panama Canal Zone, Puerto Rico, or the Virgin Islands of the United States of gold coin or gold bullion which has not been taken or sent thereto since April 5, 1933, from the continental United States or any place subject to the jurisdiction thereof.

SECTION 8. Until further order, the Secretary of the Treasury is authorized, through any agency that he may designate, to investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange, transfers of credit from any banking institution within the United States to any foreign branch or office of such banking institution or to any foreign bank or banker, and the export or withdrawal of currency from the United States, by any person within the United States; and the Secretary of the Treasury may require any person engaged in any transaction referred to herein to furnish under oath complete information relative thereto, including the production of any books of account, contracts, letters, or other papers, in connection therewith in the custody or control of such person either before or after such transaction is completed.

SECTION 9. The Secretary of the Treasury is hereby authorized and empowered to issue such regulations as he may deem necessary to carry out the purposes of this Order. Such regulations may provide for the detention in the United States of any gold coin, gold bullion, or gold certifi-

cates sought to be transported beyond the limits of the continental United States, pending an investigation to determine if such coin, bullion, or certificates are held or are to be acquired in violation of the provisions of this Executive Order. Licenses and permits granted in accordance with the provisions of this Order and the regulations prescribed hereunder, may be issued through such officers or agencies as the Secretary may designate.

SECTION 10. Whoever willfully violates any provision of this Executive Order or of any license, order, rule, or regulation issued or prescribed hereunder, shall, upon conviction, be fined not more than $10,000, or, if a natural person, may be imprisoned for not more than 10 years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.

SECTION 11. The Executive Orders of April 5, 1933, Forbidding the Hoarding of Gold Coin, Gold Bullion and Gold Certificates, and April 20, 1933, relating to Foreign Exchange and the Earmarking and Export of Gold Coin or Bullion or Currency, respectively, are hereby revoked. The revocation of such prior Executive Orders shall not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil or criminal cause prior to said revocation, but all liabilities under said Executive Orders shall continue and may be enforced in the same manner as if said revocation had not been made. This Executive Order and any regulations or licenses issued hereunder may be modified or revoked at any time.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE,
August 28, 1933.

ORDER OF THE SECRETARY OF THE TREASURY OF DECEMBER 28, 1933, AS AMENDED BY ORDER OF THE SECRETARY OF THE TREASURY OF JANUARY 11, 1934

WHEREAS Section 11 of the Federal Reserve Act of December 23, 1913, as amended by Section 3 of the Act of March 9, 1933, entitled "An Act to provide Relief in the Existing National Emergency in Banking, and for Other Purposes", provides in Subsection (n) as follows:

[*For text of the subsection, see pp. 8-9, Appendix, ante.*]

and

WHEREAS in my judgment such action is necessary to protect the currency system of the United States;

NOW, THEREFORE, I, HENRY MORGENTHAU, JR., ACTING SECRETARY of the TREASURY, do hereby require every person subject to the jurisdiction of the United States forthwith to pay and deliver to the Treasurer of the United States all gold coin, gold bullion, and gold certificates situated in the United States, owned by such person, except as follows:

A. Gold bullion owned by a person now holding such gold under a license heretofore granted by or under authority of the Secretary of the Treasury, pursuant to the Executive Order of August 28, 1933, Relating to the Hoarding, Export, and Earmarking of Gold Coin, Bullion, or Currency and to Transactions in Foreign Exchange;

B. Gold coin having a recognized special value to collectors of rare and unusual coin (but not including quarter

eagles, otherwise known as $2.50 pieces unless held, together with rare and unusual coin, as part of a collection for historical, scientific, or numismatic purposes, containing not more than four quarter eagles of the same date and design and struck by the same mint);

C. Unmelted scrap gold and gold sweepings in an amount not exceeding in the aggregate $100 belonging to any one person; and gold which has been put through a process of fabrication for a specific and customary industrial, professional, or ornamental use;

D. Gold coin, gold bullion, and gold certificates owned by a Federal Reserve bank or the Reconstruction Finance Corporation; and

E. Gold bullion and foreign gold coin now situated in the Philippine Islands, American Samoa, Guam, Hawaii, Panama Canal Zone, Puerto Rico, or the Virgin Islands of the United States, owned by a person not domiciled or doing business in the continental United States.

SECTION 2. *Delivery.*—The gold coin, gold bullion, and gold certificates herein required to be paid and delivered to the Treasurer of the United States shall be delivered by placing the same forthwith in the custody of a Federal Reserve bank or branch or a bank member of the Federal Reserve System for the account of the United States and by forwarding confirmation that the gold coin, gold bullion, and gold certificates have been so placed in custody for the account of the United States and are held subject to the order of the Treasurer of the United States, signed by such bank and the person making the delivery (or the authorized agent of such person) to the Treasurer of the United States,

Washington, D. C., in a postage prepaid envelope bearing a postmark dated prior to midnight of the day the gold coin, gold bullion, and gold certificates are so placed in custody.

SECTION 3. *Payment and Reimbursement of Costs.*—Upon receipt of the confirmation signed and delivered as required under Section 2, the Secretary of the Treasury will pay for the gold coin, gold bullion, and gold certificates placed in custody for the account of the United States in accordance with Section 2, an equivalent amount of any form of coin or currency coined or issued under the laws of the United States designated by the Secretary of the Treasury. The Secretary of the Treasury will pay all costs of the transportation of such gold coin, gold bullion, and gold certificates to the Federal Reserve bank or branch or bank member of the Federal Reserve System in the city or town nearest to the place where such gold coin, gold bullion, and gold certificates are now situated, including the cost of insurance, protection, and such other incidental costs as may be reasonably necessary. Persons desiring reimbursement for such costs actually incurred shall submit their accounts on voucher forms which may be obtained by writing to the Treasurer of the United States, Washington, D. C.

SECTION 4. *Definitions.*—As used in this Order, the term "person" means any individual, partnership, association, or corporation; the term "United States" means the United States and any place subject to the jurisdiction thereof; the term "continental United States" means the States of the United States, the District of Columbia, and the Territory of Alaska; the term "gold coin" means any coin containing gold, including foreign gold coin; and the

term "gold bullion" means any gold which has been put through a process of smelting or refining that is in such form that its value depends upon the gold content and not upon the form, but does not include gold coin or metals containing less than five troy ounces of fine gold per short ton.

SECTION 5. Any individual, partnership, association, or corporation failing to comply with any requirement hereof or of any rules or regulations issued by the Secretary of the Treasury hereunder shall be subject to the penalty provided in Section 11(n) of the Federal Reserve Act, as amended.

This order may be modified or revoked at any time.

H. MORGENTHAU, Jr.,
Acting Secretary of the Treasury.

Approved:

FRANKLIN D. ROOSEVELT

THE WHITE HOUSE,
December 28, 1933.

ORDER OF THE SECRETARY OF THE TREASURY, JANUARY 15, 1934

WHEREAS on December 28, 1933 I, HENRY MORGENTHAU, Jr., as ACTING SECRETARY of the TREASURY, issued an Order under authority of Section 11 of the Federal Reserve Act of December 23, 1913, as amended by Section 3 of the Act of March 9, 1933, entitled "An Act to Provide Relief in the Existing National Emergency in Banking, and for Other Purposes";

WHEREAS said Order, as amended by an Order of January 11, 1934, required every person subject to the jurisdiction of the United States forthwith to pay and deliver to the Treasurer of the United States all gold coin, gold bullion, and gold certificates situated in the United States, owned by such person, except as follows:

[*For exceptions, see pp. 14-15, Appendix, ante.*]

WHEREAS a reasonable time has elapsed within which any person required to deliver gold coin, gold bullion, and gold certificates could pay and deliver to the Treasurer of the United States in the manner provided in said Order of December 28, 1933, the gold coin, gold bullion, and gold certificates situated in the United States, owned by such person; and

WHEREAS in my judgment such action is necessary to protect the currency system of the United States;

NOW, THEREFORE, I, HENRY MORGENTHAU, JR., SECRETARY of the TREASURY, do hereby fix midnight of Wednesday, January 17, 1934 as the expiration of the period within which any gold coin, gold bullion, or gold

certificates may be paid and delivered to the Treasurer of the United States in compliance with the requirements contained in such Order of December 28, 1933, as amended.

In the event that any gold coin, gold bullion or gold certificates withheld in noncompliance with said Order and of this Order are offered after January 17, 1934 to the Secretary of the Treasury, the Treasurer of the United States, any United States mint or assay office, or to any fiscal agent of the United States, there shall be paid therefor only such part or none of the amount otherwise payable therefor as the Secretary of the Treasury may from time to time prescribe and the whole or any balance shall be retained and applied to the penalty payable for failure to comply with the requirements of such Order and of this Order. The acceptance of any such coin, bullion, or certificates after January 17, 1934, whether or not a part or all of the amount otherwise payable therefor is so retained, shall be without prejudice to the right to collect by suit or otherwise the full penalty provided in Section 11 (n) of the Federal Reserve Act, as amended, less such portion of the penalty as may have been retained as hereinbefore provided.

The definitions of the terms "person", "United States", "gold coin", and "gold bullion" contained in Section 4 of said Order of December 28, 1933 apply equally to such terms as used in this Order.

H. MORGENTHAU, Jr.,
Secretary of the Treasury.

APPROVED:

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE,
January 15, 1934.

GOLD RESERVE ACT OF 1934, APPROVED JANUARY 30, 1934 (48 Stat. 337)

AN ACT To protect the currency system of the United States, to provide for the better use of the monetary gold stock of the United States, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the short title of this Act shall be the "Gold Reserve Act of 1934."

SEC. 2. (a) Upon the approval of this Act all right, title, and interest, and every claim of the Federal Reserve Board, of every Federal Reserve bank, and of every Federal Reserve agent, in and to any and all gold coin and gold bullion shall pass to and are hereby vested in the United States; and in payment therefor credits in equivalent amounts in dollars are hereby established in the Treasury in the accounts authorized under the sixteenth paragraph of section 16 of the Federal Reserve Act, as heretofore and by this Act amended (U. S. C., title 12, sec. 467). Balances in such accounts shall be payable in gold certificates, which shall be in such form and in such denominations as the Secretary of the Treasury may determine. All gold so transferred, not in the possession of the United States, shall be held in custody for the United States and delivered upon the order of the Secretary of the Treasury; and the Federal Reserve Board, the Federal Reserve banks, and the Federal Reserve agents shall give such instructions and shall take such action as may be necessary to assure that such gold shall be so held and delivered.

(b) Section 16 of the Federal Reserve Act, as amended, is further amended in the following respects:

(1) The third sentence of the first paragraph is amended to read as follows: "They shall be redeemed in lawful money on demand at the Treasury Department of the United States, in the city of Washington, District of Columbia, or at any Federal Reserve bank."

(2) So much of the third sentence of the second paragraph as precedes the proviso is amended to read as follows: "The collateral security thus offered shall be notes, drafts, bills of exchange, or acceptances acquired under the provisions of section 13 of this Act, or bills of exchange endorsed by a member bank of any Federal Reserve district and purchased under the provisions of section 14 of this Act, or bankers' acceptances purchased under the provisions of said section 14 or gold certificates:".

(3) The first sentence of the third paragraph is amended to read as follows: "Every Federal Reserve bank shall maintain reserves in gold certificates or lawful money of not less than 35 per centum against its deposits and reserves in gold certificates of not less than 40 per centum against its Federal Reserve notes in actual circulation: *Provided, however,* That when the Federal Reserve agent holds gold certificates as collateral for Federal Reserve notes issued to the bank such gold certificates shall be counted as part of the reserve which such bank is required to maintain against its Federal Reserve notes in actual circulation."

(4) The fifth and sixth sentences of the third paragraph are amended to read as follows: "Notes presented for redemption at the Treasury of the United States shall

be paid out of the redemption fund and returned to the Federal Reserve banks through which they were originally issued, and thereupon such Federal Reserve bank shall, upon demand of the Secretary of the Treasury, reimburse such redemption fund in lawful money or, if such Federal Reserve notes have been redeemed by the Treasurer in gold certificates, then such funds shall be reimbursed to the extent deemed necessary by the Secretary of the Treasury in gold certificates, and such Federal Reserve bank shall, so long as any of its Federal Reserve notes remain outstanding, maintain with the Treasurer in gold certificates an amount sufficient in the judgment of the Secretary to provide for all redemptions to be made by the Treasurer. Federal Reserve notes received by the Treasurer otherwise than for redemption may be exchanged for gold certificates out of the redemption fund hereinafter provided and returned to the Reserve bank through which they were originally issued, or they may be returned to such bank for the credit of the United States."

(5) The fourth, fifth, and sixth paragraphs are amended to read as follows:

"The Federal Reserve Board shall require each Federal Reserve bank to maintain on deposit in the Treasury of the United States a sum in gold certificates sufficient in the judgment of the Secretary of the Treasury for the redemption of the Federal Reserve notes issued to such bank, but in no event less than 5 per centum of the total amount of notes issued less the amount of gold certificates held by the Federal Reserve agent as collateral security; but such deposit of gold certificates shall be counted and included as part of the 40 per centum reserve hereinbefore required. The Board shall have the right, acting through the Federal

Reserve agent, to grant in whole or in part, or to reject entirely the application of any Federal Reserve bank for Federal Reserve notes; but to the extent that such application may be granted the Federal Reserve Board shall, through its local Federal Reserve agent, supply Federal Reserve notes to the banks so applying, and such bank shall be charged with the amount of the notes issued to it and shall pay such rate of interest as may be established by the Federal Reserve Board on only that amount of such notes which equals the total amount of its outstanding Federal Reserve notes less the amount of gold certificates held by the Federal Reserve agent as collateral security. Federal Reserve notes issued to any such bank shall, upon delivery, together with such notes of such Federal Reserve bank as may be issued under section 18 of this Act upon security of United States 2 per centum Government bonds, become a first and paramount lien on all the assets of such bank.

"Any Federal Reserve bank may at any time reduce its liability for outstanding Federal Reserve notes by depositing with the Federal Reserve agent its Federal Reserve notes, gold certificates, or lawful money of the United States. Federal Reserve notes so deposited shall not be reissued, except upon compliance with the conditions of an original issue.

"The Federal Reserve agent shall hold such gold certificates or lawful money available exclusively for exchange for the outstanding Federal Reserve notes when offered by the Reserve bank of which he is a director. Upon the request of the Secretary of the Treasury the Federal Reserve Board shall require the Federal Reserve agent to transmit to the Treasurer of the United States so much of the gold certificates held by him as collateral security for

Federal Reserve notes as may be required for the exclusive purpose of the redemption of such Federal Reserve notes, but such gold certificates when deposited with the Treasurer shall be counted and considered as if collateral security on deposit with the Federal Reserve agent."

(6) The eighth paragraph is amended to read as follows:

"All Federal Reserve notes and all gold certificates and lawful money issued to or deposited with any Federal Reserve agent under the provisions of the Federal Reserve Act shall hereafter be held for such agent, under such rules and regulations as the Federal Reserve Board may prescribe, in the joint custody of himself and the Federal Reserve bank to which he is accredited. Such agent and such Federal Reserve bank shall be jointly liable for the safe-keeping of such Federal Reserve notes, gold certificates, and lawful money. Nothing herein contained, however, shall be construed to prohibit a Federal Reserve agent from depositing gold certificates with the Federal Reserve Board, to be held by such Board subject to his order, or with the Treasurer of the United States for the purposes authorized by law."

(7) The sixteenth paragraph is amended to read as follows:

"The Secretary of the Treasury is hereby authorized and directed to receive deposits of gold or of gold certificates with the Treasurer or any Assistant Treasurer of the United States when tendered by any Federal Reserve bank or Federal Reserve agent for credit to its or his account with the Federal Reserve Board. The Secretary shall prescribe by regulation the form of receipt to be issued by the

Treasurer or Assistant Treasurer to the Federal Reserve bank or Federal Reserve agent making the deposit, and a duplicate of such receipt shall be delivered to the Federal Reserve Board by the Treasurer at Washington upon proper advices from any Assistant Treasurer that such deposit has been made. Deposits so made shall be held subject to the orders of the Federal Reserve Board and shall be payable in gold certificates on the order of the Federal Reserve Board to any Federal Reserve bank or Federal Reserve agent at the Treasury or at the Subtreasury of the United States nearest the place of business of such Federal Reserve bank or such Federal Reserve agent. The order used by the Federal Reserve Board in making such payments shall be signed by the governor or vice governor, or such other officers or members as the Board may by regulation prescribe. The form of such order shall be approved by the Secretary of the Treasury."

(8) The eighteenth paragraph is amended to read as follows:

"Deposits made under this section standing to the credit of any Federal Reserve bank with the Federal Reserve Board shall, at the option of said bank, be counted as part of the lawful reserve which it is required to maintain against outstanding Federal Reserve notes, or as a part of the reserve it is required to maintain against deposits."

SEC. 3. The Secretary of the Treasury shall, by regulations issued hereunder, with the approval of the President, prescribe the conditions under which gold may be acquired and held, transported, melted or treated, imported, exported, or earmarked: (a) for industrial, professional, and artistic use; (b) by the Federal Reserve banks for the

purpose of settling international balances; and, (c) for such other purposes as in his judgment are not inconsistent with the purposes of this Act. Gold in any form may be acquired, transported, melted or treated, imported, exported, or earmarked or held in custody for foreign or domestic account (except on behalf of the United States) only to the extent permitted by, and subject to the conditions prescribed in, or pursuant to, such regulations. Such regulations may exempt from the provisions of this section, in whole or in part, gold situated in the Philippine Islands or other places beyond the limits of the continental United States.

SEC. 4. Any gold withheld, acquired, transported, melted or treated, imported, exported, or earmarked or held in custody, in violation of this Act or of any regulations issued hereunder, or licenses issued pursuant thereto, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law; and in addition any person failing to comply with the provisions of this Act or of any such regulations or licenses shall be subject to a penalty equal to twice the value of the gold in respect of which such failure occurred.

SEC. 5. No gold shall hereafter be coined, and no gold coin shall hereafter be paid out or delivered by the United States: *Provided, however,* That coinage may continue to be executed by the mints of the United States for foreign countries in accordance with the Act of January 29, 1874 (U. S. C., title 31, sec. 367). All gold coin of the United States shall be withdrawn from circulation and, together

with all other gold owned by the United States, shall be formed into bars of such weights and degrees of fineness as the Secretary of the Treasury may direct.

SEC. 6. Except to the extent permitted in regulations which may be issued hereunder by the Secretary of the Treasury with the approval of the President, no currency of the United States shall be redeemed in gold: *Provided, however,* That gold certificates owned by the Federal Reserve banks shall be redeemed at such times and in such amounts as, in the judgment of the Secretary of the Treasury, are necessary to maintain the equal purchasing power of every kind of currency of the United States: *And provided further,* That the reserve for United States notes and for Treasury notes of 1890, and the security for gold certificates (including the gold certificates held in the Treasury for credits payable therein) shall be maintained in gold bullion equal to the dollar amounts required by law, and the reserve for Federal Reserve notes shall be maintained in gold certificates, or in credits payable in gold certificates maintained with the Treasurer of the United States under section 16 of the Federal Reserve Act, as heretofore and by this Act amended.

No redemptions in gold shall be made except in gold bullion bearing the stamp of a United States mint or assay office in an amount equivalent at the time of redemption to the currency surrendered for such purpose.

SEC. 7. In the event that the weight of the gold dollar shall at any time be reduced, the resulting increase in value of the gold held by the United States (including the gold held as security for gold certificates and as a reserve for any United States notes and for Treasury notes of 1890)

shall be covered into the Treasury as a miscellaneous receipt; and, in the event that the weight of the gold dollar shall at any time be increased, the resulting decrease in value of the gold held as a reserve for any United States notes and for Treasury notes of 1890, and as security for gold certificates shall be compensated by transfers of gold bullion from the general fund, and there is hereby appropriated an amount sufficient to provide for such transfers and to cover the decrease in value of the gold in the general fund.

SEC. 8. Section 3700 of the Revised Statutes (U. S. C., title 31, sec. 734) is amended to read as follows:

"SEC. 3700. With the approval of the President, the Secretary of the Treasury may purchase gold in any amounts, at home or abroad, with any direct obligations, coin, or currency of the United States, authorized by law, or with any funds in the Treasury not otherwise appropriated, at such rates and upon such terms and conditions as he may deem most advantageous to the public interest; any provision of law relating to the maintenance of parity, or limiting the purposes for which any of such obligations, coin, or currency, may be issued, or requiring any such obligations to be offered as a popular loan or on a competitive basis, or to be offered or issued at not less than par, to the contrary notwithstanding. All gold so purchased shall be included as an asset of the general fund of the Treasury."

SEC. 9. Section 3699 of the Revised Statutes (U. S. C., title 31, sec. 733) is amended to read as follows:

"SEC. 3699. The Secretary of the Treasury may anticipate the payment of interest on the public debt, by a period not exceeding one year, from time to time, either with or without a rebate of interest upon the coupons, as to him may seem expedient; and he may sell gold in any amounts, at home or abroad, in such manner and at such rates and upon such terms and conditions as he may deem most advantageous to the public interest, and the proceeds of any gold so sold shall be covered into the general fund of the Treasury: *Provided, however*, That the Secretary of the Treasury may sell the gold which is required to be maintained as a reserve or as security for currency issued by the United States, only to the extent necessary to maintain such currency at a parity with the gold dollar."

SEC. 10. (a) For the purpose of stabilizing the exchange value of the dollar, the Secretary of the Treasury, with the approval of the President, directly or through such agencies as he may designate, is authorized, for the account of the fund established in this section, to deal in gold and foreign exchange and such other instruments of credit and securities as he may deem necessary to carry out the purpose of this section. An annual audit of such funds shall be made and a report thereof submitted to the President.

(b) To enable the Secretary of the Treasury to carry out the provisions of this section there is hereby appropriated, out of the receipts which are directed to be covered into the Treasury under section 7 hereof, the sum of $2,000,000,000, which sum when available shall be deposited with the Treasurer of the United States in a stabilization fund (hereinafter called the "fund") under the exclusive control of the Secretary of the Treasury, with the

approval of the President, whose decisions shall be final and not be subject to review by any other officer of the United States. The fund shall be available for expenditure, under the direction of the Secretary of the Treasury and in his discretion, for any purpose in connection with carrying out the provisions of this section, including the investment and reinvestment in direct obligations of the United States of any portions of the fund which the Secretary of the Treasury, with the approval of the President, may from time to time determine are not currently required for stabilizing the exchange value of the dollar. The proceeds of all sales and investments and all earnings and interest accruing under the operations of this section shall be paid into the fund and shall be available for the purposes of the fund.

(c) All the powers conferred by this section shall expire two years after the date of enactment of this Act, unless the President shall sooner declare the existing emergency ended and the operation of the stabilization fund terminated; but the President may extend such period for not more than one additional year after such date by proclamation recognizing the continuance of such emergency.

SEC. 11. The Secretary of the Treasury is hereby authorized to issue, with the approval of the President, such rules and regulations as the Secretary may deem necessary or proper to carry out the purposes of this Act.

SEC. 12. Paragraph (b) (2), of section 43, title III, of the Act approved May 12, 1933 (Public, Numbered 10, Seventy-third Congress), is amended by adding two new sentences at the end thereof, reading as follows:

"Nor shall the weight of the gold dollar be fixed in any event at more than 60 per centum of its present weight. The powers of the President specified in this paragraph shall be deemed to be separate, distinct, and continuing powers, and may be exercised by him, from time to time, severally or together, whenever and as the expressed objects of this section in his judgment may require; except that such powers shall expire two years after the date of enactment of the Gold Reserve Act of 1934 unless the President shall sooner declare the existing emergency ended, but the President may extend such period for not more than one additional year after such date by proclamation recognizing the continuance of such emergency."

Paragraph (2) of subsection (b) of section 43, title III, of an act entitled "An act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes", approved May 12, 1933, is amended by adding at the end of said paragraph (2) the following:

"The President, in addition to the authority to provide for the unlimited coinage of silver at the ratio so fixed, under such terms and conditions as he may prescribe, is further authorized to cause to be issued and delivered to the tenderer of silver for coinage, silver certificates in lieu of the standard silver dollars to which the tenderer would be entitled and in an amount in dollars equal to the number of coined standard silver dollars that the tenderer of such silver for coinage would receive in standard silver dollars.

"The President is further authorized to issue silver certificates in such denominations as he may prescribe against any silver bullion, silver, or standard silver dollars in the Treasury not then held for redemption of any outstanding silver certificates, and to coin standard silver dollars or subsidiary currency for the redemption of such silver certificates.

"The President is authorized, in his discretion, to prescribe different terms and conditions and to make different charges, or to collect different seigniorage, for the coinage of silver of foreign production than for the coinage of silver produced in the United States or its dependencies. The silver certificates herein referred to shall be issued, delivered, and circulated substantially in conformity with the law now governing existing silver certificates, except as may herein be expressly provided to the contrary, and shall have and possess all of the privileges and the legal tender characteristics of existing silver certificates now in the Treasury of the United States, or in circulation.

"The President is authorized, in addition to other powers, to reduce the weight of the standard silver dollar in the same percentage that he reduces the weight of the gold dollar.

"The President is further authorized to reduce and fix the weight of subsidiary coins so as to maintain the parity of such coins with the standard silver dollar and with the gold dollar."

SEC. 13. All actions, regulations, rules, orders, and proclamations heretofore taken, promulgated, made or issued by the President of the United States or the Secretary of the Treasury, under the Act of March 9, 1933, or under section 43 or section 45 of title III of the Act of May 12, 1933, are hereby approved, ratified, and confirmed.

SEC. 14. (a) The Second Liberty Bond Act, as amended, is further amended as follows:

(1) By adding at the end of section 1 (U. S. C., title 31, sec. 752; Supp. VII, title 31, sec. 752), a new paragraph as follows:

"Notwithstanding the provisions of the foregoing paragraph, the Secretary of the Treasury may from time to time, when he deems it to be in the public interest, offer such bonds otherwise than as a popular loan and he may make allotments in full, or reject or reduce allotments upon any applications whether or not the offering was made as a popular loan."

(2) By inserting in section 8 (U. S. C., title 31, sec. 771), after the words "certificates of indebedness", a comma and the words "Treasury bills".

(3) By striking out the figures "$7,500,000,000" where they appear in section 18 (U. S. C., title 31, sec. 753) and inserting in lieu thereof the figures "$10,000,000,000."

(4) By adding thereto two sections, as follows:

"SEC. 19. Notwithstanding any other provisions of law, any obligations authorized by this Act may be issued for the purchase, redemption, or refunding, at or before maturity, of any outstanding bonds, notes, certificates of indebtedness, or Treasury bills, of the United States, or to obtain funds for such purchase, redemption, or refunding, under such rules, regulations, terms, and conditions as the Secretary of the Treasury may prescribe.

"SEC. 20. The Secretary of the Treasury may issue any obligations authorized by this Act and maturing not more

than one year from the date of their issue on a discount basis and payable at maturity without interest. Any such obligations may also be offered for sale on a competitive basis under such regulations and upon such terms and conditions as the Secretary of the Treasury may prescribe, and the decisions of the Secretary in respect of any issue shall be final."

(b) Section 6 of the Victory Liberty Loan Act (U. S. C., title 31, sec. 767; Supp. VII, title 31, secs, 767-767a) is amended by striking out the words "for refunding purposes", together with the preceding comma, at the end of the first sentence of subsection (a).

(c) The Secretary of the Treasury is authorized to issue gold certificates in such form and in such denominations as he may determine, against any gold held by the Treasurer of the United States, except the gold fund held as a reserve for any United States notes and Treasury notes of 1890. The amount of gold certificates issued and outstanding shall at no time exceed the value, at the legal standard, of the gold so held against gold certificates.

SEC. 15. As used in this Act the term "United States" means the Government of the United States; the term "the continental United States" means the States of the United States, the District of Columbia, and the Territory of Alaska; the term "currency of the United States" means currency which is legal tender in the United States, and includes United States notes, Treasury notes of 1890, gold certificates, silver certificates, Federal Reserve notes, and circulating notes of Federal Reserve banks and national banking associations; and the term "person" means any individual, partnership, association, or corporation, including

the Federal Reserve Board, Federal Reserve banks, and Federal Reserve agents. Wherever reference is made in this Act to equivalents as between dollars or currency of the United States and gold, one dollar or one dollar face amount of any currency of the United States equals such a number of grains of gold, nine-tenths fine, as, at the time referred to, are contained in the standard unit of value, that is, so long as the President shall not have altered by proclamation the weight of the gold dollar under the authority of section 43, title III, of the Act approved May 12, 1933, as heretofore and by this Act amended, twenty-five and eight-tenths grains of gold, nine-tenths fine, and thereafter such a number of grains of gold, nine-tenths fine, as the President shall have fixed under such authority.

SEC. 16. The right to alter, amend, or repeal this Act is hereby expressly reserved. If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

SEC. 17. All Acts and parts of Acts inconsistent with any of the provisions of this Act are hereby repealed.

Approved, January 30, 1934.

PROCLAMATION OF THE PRESIDENT, JANUARY 31, 1934

WHEREAS, by virtue of section 1 of the act of Congress approved March 14, 1900 (31 Stat. L. 45), the present weight of the gold dollar is fixed at 25.8 grains of gold nine tenths fine; and

WHEREAS, by section 43, title III of the act approved May 12, 1933 (Public, No. 10, 73d Cong.), as amended by section 12 of the Gold Reserve Act of 1934, it is provided in part as follows:

> [*For text of the Act of May 12, 1933, see pp. 22-25, Appendix, ante. For text of section 12 of the Gold Reserve Act of 1934, see p. 50, Appendix, ante.*]

WHEREAS, I find, upon investigation, that the foreign commerce of the United States is adversely affected by reason of the depreciation in the value of the currencies of other governments in relation to the present standard value of gold, and that an economic emergency requires an expansion of credit; and

WHEREAS, in my judgment, measures additional to those provided by subsection (a) of said section 43 are required to meet the purposes of such section; and

WHEREAS, I find, from my investigation, that, in order to stabilize domestic prices and to protect the foreign commerce against the adverse effect of depreciated foreign currencies, it is necessary to fix the weight of the gold dollar at 15$\frac{5}{21}$ grains nine tenths fine,

NOW, THEREFORE, be it known that I, FRANKLIN D. ROOSEVELT, President of the United States, by virtue of the authority vested in me by section 43, title III of said act of May 12, 1933, as amended, and by virtue of all other authority vested in me, do hereby proclaim, order, direct, declare, and fix the weight of the gold dollar to be 15 5/21 grains nine tenths fine, from and after the date and hour of this proclamation. The weight of the silver dollar is not altered or affected in any manner by reason of this proclamation.

This proclamation shall remain in force and effect until and unless repealed or modified by act of Congress or by subsequent proclamation; and notice is hereby given that I reserve the right by virtue of the authority vested in me to alter or modify this proclamation as the interest of the United States may seem to require.

IN WITNESS WHEREOF I have hereunto set my hand and have caused the seal of the United States to be affixed.

DONE in the City of Washington at 3:10 o'clock in the afternoon, eastern standard time, this 31st day of January, in the year of our Lord one thousand nine hundred and thirty-four, and of the Independence of the United States the one hundred and fifty-eighth.

FRANKLIN D. ROOSEVELT.

By the President:

CORDELL HULL,
Secretary of State.

[No. 2072]

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FILE COPY

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1934

UNITED STATES OF AMERICA, RECONSTRUCTION FINANCE CORPORATION, et al., *Petitioners*,

against

BANKERS TRUST COMPANY and WILLIAM H. BIXBY, Trustees, *Respondents*.

No. 471 - 47

RESPONDENTS' APPEARANCE, WAIVER AND CONSENT

JAMES H. MCINTOSH,
EDWARD W. BOURNE,
Attorneys for Respondents.

CORPORATE PRESS, INC., NEW YORK CITY

No.....

IN THE

Supreme Court of the United States

OCTOBER TERM, 1934

UNITED STATES OF AMERICA, RECONSTRUCTION FINANCE CORPORATION, et al., *Petitioners*, against BANKERS TRUST COMPANY and WILLIAM H. BIXBY, Trustees, *Respondents*.	RESPONDENTS' APPEARANCE, WAIVER AND CONSENT

Bankers Trust Company and William H. Bixby, Trustees, Respondents herein and Appellants in the two Causes mentioned in the Petitioners' Petition as pending in the United States Circuit Court of Appeals for the Eighth Circuit, now here enter their appearance herein, waive all notices required by Rule XXXVIII, and join the Petitioners in requesting the allowance of a Writ of Certiorari as prayed in their said Petition.

BANKERS TRUST COMPANY and
WILLIAM H. BIXBY, as Trustees,
Respondents herein and Appellants
in said two Causes,
By JAMES H. MCINTOSH,
and EDWARD W. BOURNE,
Their Attorneys.

Dated, New York, October 16, 1934.

FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1934.

No. 471—In Bankruptcy.

BANKERS TRUST COMPANY, *et al.*,

Appellants,

vs.

RECONSTRUCTION FINANCE CORPORATION, L. W. BALDWIN and GUY A. THOMPSON, Trustees of MISSOURI PACIFIC RAILROAD COMPANY, UNITED STATES OF AMERICA, *et al.*,

Appellees.

No. 472—In Bankruptcy.

BANKERS TRUST COMPANY, *et al.*,

Appellants,

vs.

RECONSTRUCTION FINANCE CORPORATION, *et al.*,

Appellees.

ON CERTIORARI FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH JUDICIAL CIRCUIT.

STATEMENT OF GUARANTY TRUST COMPANY OF NEW YORK AND BENJAMIN F. EDWARDS, AS TRUSTEES UNDER THE FIRST AND REFUNDING MORTGAGE OF MISSOURI PACIFIC RAILROAD COMPANY.

EDWIN S. S. SUNDERLAND,
Counsel for Guaranty Trust Company of New York and Benjamin F. Edwards, as Trustees under the First and Refunding Mortgage of Missouri Pacific Railroad Company.

THE BALLOU PRESS NEW YORK

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IN THE

Supreme Court of the United States

October Term, 1934.

BANKERS TRUST COMPANY, *et al.*,
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vs.

RECONSTRUCTION FINANCE CORPORATION, L. W. BALDWIN and GUY A. THOMPSON, Trustees of MISSOURI PACIFIC RAILROAD COMPANY, UNITED STATES OF AMERICA, *et al.*,
Appellees.

No. 471
In Bankruptcy.

BANKERS TRUST COMPANY, *et al.*,
Appellants,

vs.

RECONSTRUCTION FINANCE CORPORATION *et al.*,
Appellees.

No. 472
In Bankruptcy.

ON CERTIORARI FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH JUDICIAL CIRCUIT.

STATEMENT OF GUARANTY TRUST COMPANY OF NEW YORK AND BENJAMIN F. EDWARDS, AS TRUSTEES UNDER THE FIRST AND REFUNDING MORTGAGE OF MISSOURI PACIFIC RAILROAD COMPANY.

Introductory.

Guaranty Trust Company of New York and Benjamin F. Edwards, as Trustees under the First and Refunding Mortgage of Missouri Pacific Railroad Company (hereinafter called the First and Refunding Mortgage Trustees), are named as Appellees in this appeal solely by reason of the fact that they have intervened pursuant to leave first had and obtained of the District Court in the main proceedings under Section 77 of the Bankruptcy Act, as amended. The petition of the First and Refunding Mortgage Trustees, verified June 7, 1933 (R. 19, 38) upon which the order of the District Court granting leave to such Trustees to intervene (R. 39) was based, among other things alleges that $264,045,500 principal amount of First and Refunding Bonds are outstanding (R. 25), that certain defaults under the mortgage securing such bonds exist, and asks leave to intervene and that there be a segregation of income from the mortgaged premises for the benefit of such bondholders. Subsequently an order was entered on June 22, 1933 (R. 43), directing that the books of the Debtor be so kept as to show the income derived from the properties subject to the lien of the mortgage. This petition of the First and Refunding Mortgage Trustees contained no such allegation or prayer as is found in the petition of Bankers Trust Company asking for payment in gold, or its equivalent. The answers filed to the petition of the First and Refunding Mortgage Trustees consequently raise no such question as did the answers filed by the Trustees of the Debtor and by Reconstruction Finance Corporation to the petition of Bankers Trust Company. For this reason the First and Refunding Mortgage Trustees took no part in the proceedings had upon the petition filed by Bankers Trust Company in the District Court.

Inasmuch, however, as they are named as parties to this appeal, the First and Refunding Mortgage Trustees feel it incumbent upon them briefly to state their position on the fundamental question raised by the appeal.

Statement.

While the provisions of the First and Refunding Mortgage are not in the record before the Court, the First and Refunding Mortgage Trustees are advised and believe that no distinction of substance could be made between the gold clause contained in the First and Refunding Mortgage and that contained in the St. Louis, Iron Mountain & Southern River and Gulf Divisions First Mortgage, relied upon by the appellant, Bankers Trust Company.

The First and Refunding Mortgage Trustees, through their counsel, have made a detailed and exhaustive study of the questions presented on the appeal. They believe the issues involved will have been so fully and ably presented by the appellant on the one hand and the Government, the Reconstruction Finance Corporation and the Trustees of the Debtor on the other hand, that for them, as nominal parties, to burden this Court with a repetition of arguments and citations would be a work of supererogation.

However, as representatives of over a quarter of a billion dollars of funded debt of the Debtor, evidenced by bonds and secured by mortgage containing gold clauses substantially similar to those at issue here, the First and Refunding Mortgage Trustees are keenly sympathetic with the position taken by the Trustee of the Iron Mountain mortgage. Unless and until this Court shall uphold the constitutionality of Public Resolution No. 10 (Section 463, Title 31, U. S. C. passed June 5, 1933), the First and Refunding Mortgage Trustees conceive it to be their duty, as such trustees, to insist upon compliance with the exact terms and provisions of the First and Refunding Mortgage and upon enforcement of the provisions of the bonds issued thereunder according to their tenor and effect. These provisions are clear and unambiguous. They require that principal of and interest on the First and Refunding bonds be paid in United States gold coin of or equal to the standard of weight and fineness existing on the date of the issue of the bonds, or the equivalent thereof.

Holding these views, the First and Refunding Mortgage Trustees, on behalf of themselves as such Trustees and on behalf of the First and Refunding Mortgage bonds, place themselves in the hands of this distinguished Court, with full realization that this Court will have in mind the interests of such Trustees and the bondholders whom they represent.

Respectfully submitted,

EDWIN S. S. SUNDERLAND,
Counsel for Guaranty Trust Company of New York and Benjamin F. Edwards, as Trustees under the First and Refunding Mortgage of Missouri Pacific Railroad Company.

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FILE COPY

DEC 31

IN THE

Supreme Court of the United States

OCTOBER TERM, 1934

Nos. 471 and 472.

UNITED STATES OF AMERICA, RECONSTRUCTION FINANCE CORPORATION, et al.,

Petitioners,

against

BANKERS TRUST COMPANY and WILLIAM H. BIXBY, Trustees,

Respondents.

BRIEF FOR RESPONDENTS

JAMES H. MCINTOSH,
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THOMAS W. WHITE,
Attorneys for Respondents.

29 December, 1934.

CORPORATE PRESS, INC., NEW YORK CITY

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1934

UNITED STATES OF AMERICA, RECONSTRUCTION FINANCE CORPORATION, et al., *Petitioners,* against BANKERS TRUST COMPANY and WILLIAM H. BIXBY, Trustees, *Respondents.*	Nos. 471 and 472.

BRIEF FOR RESPONDENTS

The Opinion Below.

The opinion of the District Court (R. 109) is reported in 7 F. Supp. 1.

Jurisdiction.

The decree of the District Court was signed and entered July 6, 1934 (R. 131). Separate appeals to the United States Circuit Court of Appeals for the Eighth Circuit were allowed by the District Court on July 28, 1934, and by the Circuit Court of Appeals on July 30, 1934 (R. 137 and 254). The case is here on Writs of Certiorari issued pursuant to Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

The sole question in the case is the constitutionality of Joint Resolution No. 10 of the 1st Session of the 73rd Congress, passed June 5, 1933, by which Congress undertook to interfere with and impair the obligations of gold clause con-

tracts (48 Stat. 112). The Respondents are Trustees of a Mortgage securing bonds payable in gold coin of the United States of the standard of weight and fineness of May 1, 1903.

The Way the Case Comes into This Court.

The Respondents are the Trustees under a Mortgage dated May 1, 1903, made by St. Louis, Iron Mountain & Southern Railway Company for the purpose of securing the payment of an issue of bonds maturing May 1, 1933. The Mortgage covered lines of railroad, equipment, and other property of the mortgagor (R. 54-56). In 1917 Missouri Pacific Railroad Company, Debtor in this proceeding, acquired the mortgaged property, but took it subject to the Mortgage (R. 56-57).

The debt secured by the Respondents' Mortgage became due May 1, 1933 (R. 151, 156-158, 186) and is in default of payment (R. 148). March 31, 1933, Missouri Pacific Railroad Company filed its petition in the office of the Clerk of the District Court of the United States, Eastern Division, Eastern Judicial District of Missouri, pursuant to Section 77 of the Bankruptcy Act, alleging that it was unable to meet its debts as they matured (R. 3). Thereupon the District Court on that day entered an order approving said petition and taking over the Railroad Company's property (R. 5), including the property subject to the Respondents' Mortgage.

December 27, 1933, the Respondents filed in said proceeding a petition for leave to intervene in order to have the income of the property subject to their Mortgage applied against the Mortgage debt (R. 52-60). In their petition, they set forth the principal of the mortgage debt and alleged that the debt was payable (R. 54) "in gold coin of the United States of the standard of weight and fineness prevailing on May 1, 1903."

April 5, 1934, the Court made an order giving the Respondents (R. 70) leave to intervene specially to protect and fully conserve their rights, and authorizing the filing of answers to their petition.

Meantime, and on January 25, 1934, Reconstruction Finance Corporation and United States of America, as creditors of the Debtor, filed their joint petition for leave to intervene, in which they traversed some allegations of the Respondents' petition of intervention and denied the validity of the gold clause contained in the Respondents' Mortgage and in the bonds it secures (R. 60-68).

April 5, 1934, the Court made orders giving leave to Reconstruction Finance Corporation and United States of America to intervene specially (R. 69, 71).

April 9, 1934, Reconstruction Finance Corporation filed an answer putting in issue the validity of the gold clause (R. 72-77). April 28, 1934, United States of America filed a similar answer (R. 91-97). The Debtor's Trustees had already filed a like answer (R. 77-81).

The answers of Reconstruction Finance Corporation, United States of America, and the Debtor's Trustees all prayed that there be a prompt decision of the issue of the validity of the gold clause (R. 76, 96, 80).

May 21, 1934 (R. 98-100), Guaranty Trust Company of New York and Benjamin F. Edwards, as Trustees under the First and Refunding Mortgage of the Debtor, answered the allegations of Respondents' petition of intervention, not denying the validity of the gold clause, but asking that a decision (R. 99) "be reserved without prejudice to the rights of any party."

As the Reconstruction Finance Corporation, United States of America, and the Trustees of the Debtor had all asked that the Court determine "without delay" that the gold clause was null and void, and that the Mortgage debt could be satisfied by the payment of the nominal amount

in current dollars, the Court directed a hearing on May 11, 1934, of the issue of law presented (R. 97) which was adjourned to May 25, 1934 (R. 97).

On the hearing, May 25th, the Respondents put in evidence without objection a copy of the Mortgage and a specimen of the outstanding bonds which the Mortgage secured, and it was stipulated that the bonds had not been paid (R. 148).

The hearing was had under Equity Rule 29 (R. 102, 109) upon the motion of the Reconstruction Finance Corporation, the United States of America, and the Debtor's Trustees to "construe" the gold clause and to declare it null and void (R. 102, 109).

June 20, 1934, the Court filed an opinion sustaining the constitutionality of the Joint Resolution of June 5, 1933 (R. 109) and declaring the gold clause void. A decree accordingly was entered July 6, 1934 (R. 131).

The Respondents took two appeals to the United States Circuit Court of Appeals for the Eighth Circuit, one appeal allowed by the District Judge July 28, 1934 (R. 137-138); the other allowed July 30, 1934, by the United States Circuit Court of Appeals for the Eighth Circuit (R. 254). There were thus two cases docketed in the United States Circuit Court of Appeals, No. 10071 and No. 10116, but only one record was printed containing the appeal papers on both appeals.

Before argument of either appeal, all the parties, except the Respondents, filed here a petition for Writs of Certiorari. The Respondents formally in this Court "joined the petitioners in requesting the allowance of a Writ of Certiorari as prayed in their said petition."

The case, therefore, as it stands here, is the appeal of the Respondents from a decree of the District Court against them which has not otherwise been heard or decided.

Statement of the Case.

I.

Brief Statement of the Issue.

This is a dispute between private persons about private written bond and mortgage contracts.

In 1903, the St. Louis, Iron Mountain & Southern Railway Company made and sold an issue of mortgage bonds, in each one of which it promised to pay at the end of thirty years a sum to be measured in a specified way. In 1917 the Debtor bought the mortgaged property subject to the Mortgage, the terms of which were a matter of record. The bonds and mortgage matured on May 1, 1933. They were not paid.

June 5, 1933, Congress passed a Joint Resolution which undertook to change the terms of the bonds and mortgage by voiding provisions contained therein. January 31, 1934, the President issued a Proclamation pursuant to the Agricultural Adjustment Act and the Gold Reserve Act of 1934, and the combined effect of the Resolution, the Acts and the Proclamation was that, if they were valid as applied to these contracts, the amount of the lien of the Respondents' Mortgage measured in the money now current was thereby substantially reduced.

The issue here then is,—Where parties have made contracts with each other for borrowing money, and have by mutual agreement adopted a lawful measure of amount to be repaid, has Congress constitutional power to change the terms of the contracts, and to provide that the debt and the lien securing the debt may be discharged by paying a substantially less sum than the borrower agreed to pay?

II.

The reasons why the Railway Company early in 1903 wanted to borrow money.

Early in 1903 the St. Louis, Iron Mountain & Southern Railway Company owned main railroad lines and branches of the aggregate length of about 1,428.65 miles (R. 151). In addition thereto, it had acquired the lines and property of the White River Railway Company and of the St. Louis Valley Railway Company, constructed and authorized to be constructed, and of the Memphis, Helena and Louisiana Railroad Company (R. 151-153). The Company needed money to improve its existing lines, to complete and equip the property of the several companies it had acquired, and to construct and acquire other lines connecting parts of the railroad which it already owned or had acquired (R. 154-155). Hence its directors and stockholders (R. 155) "duly authorized the creation and issue of Four per cent. bonds to be known as St. Louis, Iron Mountain and Southern Railway Company River and Gulf Divisions First Mortgage Four Per Cent. Thirty-Year Gold Bonds, * * * both principal and interest being payable in the City of New York in gold coin of the United States of the present standard of weight and fineness."

The issue was limited to $50,000,000, and was to be secured by a mortgage or deed of trust constituting a first lien on the property described in and conveyed by said mortgage or deed of trust, and by all other property of every kind and description constructed or acquired by the Railway Company by the use of said bonds (R. 156).

Bonds of the principal amount of $34,548,000 were duly issued on or after May 1, 1903, and were outstanding in the hands of the public when they became due May 1, 1933 (R. 54, 149). Each was payable in "gold coin of the United States of the present standard of weight and fineness" (R. 54, 156-161, 235-236).

III.

Why the Bonds and Mortgage were made payable in "gold coin of the United States of the present standard of weight and fineness."

The bonds were to be Thirty-year Bonds. The currency of the country had been depreciated in the past, and there was apprehension at the time that it might be depreciated in the future.

In 1862 Congress passed the first Legal Tender Act, which was the first statute under which Greenbacks were issued and were made legal tender in payment of private debts. "During 1862 the fluctuations in the quotations of gold in paper currency ranged between 102 and 132; in 1863 between 125 and 160; and in 1864 between 155 and 285" (Dewey's Financial History of the United States, p. 295). After the close of the Civil War the disparity between gold and paper currency diminished gradually (*id.* 376). The process was expedited by the passage of the Resumption Act of 1875, which provided for the resumption of specie payments on January 1, 1879 (*id.* 372-373); but it was December, 1878, before paper currency was quoted at par (*id.* 375). Thus the country had an experience of depreciated paper money lasting for over sixteen years.

Other reasons existed for concern as to the future of the currency.

The Greenback Party had a vigorous prominence for a time, polling more than 1,000,000 votes in the Congressional election of 1878 (*id.* 378).

In 1877 a bill providing for the free and unlimited coinage of silver passed in the House of Representatives by a large majority. It was modified in the Senate. The resultant Bland-Allison Act restored the legal tender character of the silver dollar, and required the Secretary of the Treasury to purchase silver bullion at the market price, not less than $2,000,000 nor more than $4,000,000 per month, and to coin it into dollars (*id.* 405-407).

The Greenback movement waned, but the demands of those interested in silver persisted. The Sherman Silver Act of 1890 increased the amount of silver bullion to be purchased each month and made other provisions designed to strengthen the monetary position of silver (*id.* 436-438).

In 1893, after the British Government suspended the free coinage of silver in India, and when the gold reserve of the United States Treasury was threatened by the compulsory purchase of silver, the statutory provisions requiring the purchase and coinage of silver were repealed (*id.* 444-447).

Then came the Bryan Presidential campaign in 1896, in which the sole issue was the free and unlimited coinage of silver at the ratio of sixteen ounces of silver to one ounce of gold. The fact that 50,000 votes properly placed would have elected Bryan and committed the country to the free and unlimited coinage of silver at the ratio of 16 to 1, shows how serious was the threat, how imminent the prospect, of the depreciation of the currency. In the Presidential compaign of 1900 the free coinage of silver at the ratio of 16 to 1 was still an important issue.

It was only three years later, in 1903, that the Respondents' Mortgage was executed and bonds issued thereunder. The free silver agitation was then on the decline but the memory of it was vital. Nor had the public forgotten that less than thirty years before depreciated paper money was current. Hence, in 1903, the public was not prepared to invest in thirty-year securities and meantime to assume the risk of a depreciation of the currency.

The Railway Company knew the state of the public mind. It knew that it could not sell these long term bonds unless it protected the bondholders from all the risk of a future depreciation of the currency. It knew also that if it protected the bondholders from any risk of a future depreciation of the currency, it not only could sell its bonds, but it could sell them to draw a low rate of interest, four per cent. Hence, for the purpose of guaranteeing that the purchasers of the bonds would get back exactly the same value they

paid for them, the Railway Company made the bonds payable, not in money, merely, not in dollars, merely, but for each bond issued it agreed to pay the bondholder on May 1, 1933, "One thousand dollars gold coin of the United States of the present standard of weight and fineness" (R. 157, 159).

The words themselves show that the Railway Company intentionally undertook to protect the holders of the bonds against any possible depreciation of the currency,—not only against the free and unlimited coinage of silver, or the further issue of irredeemable paper money, but against the possible reduction of the gold content of the dollar. The holders of the bonds were assured that the payment to be made to them in 1933 would be measured by the most stable known measure of value, the value of gold.

In adopting this standard or measure of value the Railway Company used, and the bondholders accepted, the standard which Congress had fixed only three years before in the Gold Standard Act which provided (C. 41, § 1, 31 Stat. 45; U. S. Code Annotated, Title 31, Section 314):

> "Sec. 314. *Standard unit of value.* The dollar consisting of twenty-five and eight-tenths grains of gold nine-tenths fine shall be the standard unit of value, and all forms of money issued or coined by the United States shall be maintained at a parity of value with this standard, and it shall be the duty of the Secretary of the Treasury to maintain such parity."

And in agreeing to pay the bondholders "in gold coin of the present standard of weight and fineness" these parties not merely adopted the standard the Government had fixed, but they adopted substantially the phraseology of the Gold Standard Act of 1900 which had authorized the issuance of Government bonds "payable, principal and interest, in gold coin of the present standard of value" (C. 41, § 2, 31 Stat. 45; U. S. Code Annotated, Title 31, Section 408).

Each dollar the purchasers of these bonds gave the Railway Company for them was, or was the equivalent of, a dol-

lar in gold coin of the United States of the standard of weight and fineness on May 1, 1903. The Railway Company agreed to pay back when due exactly what it got or the equivalent.

IV.

The gold clause, authorized by the stockholders and directors and successfully held out as an inducement to the public to buy the bonds, is especially emphasized both in the Bonds and in the Mortgage.

In the resolution authorizing and directing the issue, the directors and stockholders required that the bonds should be (R. 155) "known as the St. Louis, Iron Mountain and Southern Railway Company River and Gulf Division First Mortgage Four Per Cent. Thirty Year Gold Bonds" (R. 155).

A not very good photostatic copy of one of the bonds is bound in the record after page 234. The Court will notice how the words "Gold Bond" stand out both on the face and on the back of the bond.

Each bond contained the gold clause (R. 157, 159). Each coupon promised to pay in gold coin (R. 161).

The Mortgage mentions the gold feature of the bonds ten times,—once in the title (R. 151), once in the preamble reciting the resolutions of the stockholders and directors (R. 155), six times in setting forth the provisions of the coupon and registered bonds (R. 156-161), once in setting forth the provisions of the coupons (R. 161), once in the provisions relating to temporary bonds (R. 171), and once in the Railway Company's covenant of payment (R. 186). This covenant, which is in Article Third of the Mortgage (R. 186), reads (italics ours):

> "The Railway Company covenants and agrees that it will duly and punctually pay or cause to be paid the principal and interest of every bond issued hereunder and secured hereby all in gold coin of the United States of America of *or equal to* the present standard of weight and fineness * * *."

Could the gold payment feature have been more effectively stressed than it was here?

V.

The Missouri Pacific Railway Company acquired the property subject to the Respondents' Mortgage, and has no interest therein except subject to the Mortgage. The Mortgage Debt has not been paid, and the Mortgage remains a valid Lien on the mortgaged property for the sum agreed to be paid.

In 1917 the Debtor acquired the property of the St. Louis, Iron Mountain & Southern Railway Company (R. 56-57). It took the property subject to the Mortgage. By taking it subject to the Mortgage, the Debtor thereby assented to the measure of the debt which the St. Louis, Iron Mountain & Southern Railway Company had agreed to. But it is now here claiming that that debt is not what the bonds and the Mortgage plainly say it is, because Congress has changed the contract.

The bonds became due on May 1, 1933, but they have not been paid. If the bonds had been paid when due the questions now presented would not have arisen.

VI.

By the Joint Resolution of June 5, 1933, and the Gold Reserve Act of 1934 and the President's Proclamation issued pursuant thereto, Congress has attempted to reduce the amount of the Respondents' valid Mortgage lien.

June 5, 1933, Congress passed and the President approved a joint Resolution as follows (C. 48, 48 Stat. 112):

> "To assure uniform value to the coins and currencies of the United States.
>
> "Whereas the holding of or dealing in gold affect the public interest, and are therefore subject to proper regulation and restriction; and
>
> "Whereas the existing emergency has disclosed that provisions of obligations which purport to give

the obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby, obstruct the power of the Congress to regulate the value of the money of the United States, and are inconsistent with the declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in the payment of debts. Now, therefore, be it

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. Any such provision contained in any law authorizing obligations to be issued by or under authority of the United States, is hereby repealed, but the repeal of any such provision shall not invalidate any other provision or authority contained in such law.

"(b) As used in this resolution, the term 'obligation' means an obligation (including every obligation of and to the United States, excepting currency) payable in money of the United States; and the term 'coin or currency' means coin or currency of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations.

"SEC. 2. The last sentence of paragraph (1) of subsection (b) of section 43 of the Act entitled 'An

act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes,' approved May 12, 1933, is amended to read as follows:

"All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations) heretofore or hereafter coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues, except that gold coins, when below the standard weight and limit of tolerance provided by law for the single piece, shall be legal tender only at valuation in proportion to their actual weight.

"Approved, June 5, 1933, 4:40 p. m."

January 31, 1934, pursuant to Section 43 of the Agricultural Adjustment Act (C. 25, 48 Stat. 51-53) and Section 12 of the Gold Reserve Act of 1934 (C. 6, 48 Stat. 342), the President issued, approved and that day made effective a proclamation (Appendix to Petitioners' Brief, pp. 144-148) establishing a new gold dollar of 15 5/21 grains nine-tenths fine in place of the standard gold dollar of 25.8 grains nine-tenths fine which was the standard dollar at the time this mortgage was made, May 1, 1903.

The Decree Appealed From.

The Court below held that the Joint Resolution was constitutional and that the mortgage debt could be satisfied at any time by payment of any legal tender "dollar for dollar" (R. 131-134).

This means that for each of the old gold dollars of 25.8 grains which the Railway Company promised to pay it need now only pay a new dollar of 15 5/21 grains. And if still

another dollar is established, the Railway Company can use it "dollar for dollar" to pay the mortgage debt, whatever its gold value may be, or even if it has no value at all.

Specification of Errors Relied Upon.

The Respondents, for a reversal of the decree, rely upon the following several assignments of error (R. 135, 252):

1. The Court erred in making its Finding No. (3).

2. The Court erred in making its Finding No. (4).

3. The Court erred in making its Finding No. (5).

4. The Court erred in making its Finding No. (6).

5. The Court erred in making its Finding No. (7).

6. The Court erred in making its Finding No. (8).

7. The Court erred in failing to hold that the so-called "gold clauses" in the Mortgage and Bonds referred to in said decree were intended to and do entitle the obligees to gold coin of the United States of the standard of weight and fineness on May 1, 1903, or to the equivalent thereof if such equivalent could be determined.

8. The Court erred in failing to hold that the equivalent of $1,000 in gold coin of the United States of the standard of weight and fineness of May 1, 1903, could be determined, and was at the time of said decree and still is the number of dollars then and now current obtained by multiplying 1,000 by 25.8 and dividing the same by 15 5/21.

9. The Court erred in failing to hold that the lien of the Mortgage and the amount due on the Bonds issued thereunder could not be discharged except by the payment of the amount of such lien or otherwise pursuant to law.

10. The Court erred in holding that Congress had the power under the Constitution of the United States to enact

so much of Public Resolution No. 10, approved June 5, 1933, as purports to provide that every obligation requiring payment in gold or in an amount in money of the United States measured by gold could be discharged upon payment, dollar for dollar, in any coin or currency which at the time of the payment is legal tender for public and private debts.

11. The Court erred in failing to hold that so much of Public Resolution No. 10, approved June 5, 1933, as purports to provide that every obligation requiring payment in gold or in an amount in money of the United States measured by gold could be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts is in contravention of the Constitution of the United States and particularly the Fifth Amendment thereto.

12. The Court erred in holding that the Trustees and the Bondholders are entitled only to payment of $1,000 upon each Bond in the principal amount of $1,000, validly issued and outstanding, in such lawful money of the United States as is legal tender for the payment of debts, with interest thereon, also in such lawful money of the United States; and that such payment would extinguish the total amount of both principal and interest due upon said bonds.

13. The Court erred in holding that any and all amounts payable to the said Mortgage Trustees should be paid to said Trustees in any lawful money of the United States which is legal tender for debts, and that the money so paid should be accepted by said Trustees at the nominal value thereof and in discharge, dollar for dollar, of the face amount of the indebtedness, including interest, to which it may be applied.

14. The Court erred in holding that the claims of the said Trustees and the said Bondholders for payment in gold or its equivalent and for payment in excess of that provided for in said decree should be denied and rejected.

Summary of the Argument.

I.

The gold clause not merely prescribes the kind of money in which the debt is to be paid, but it fixes a measure of the value of the bonds and a means of computing the sum due if the currency should be depreciated before the bonds are paid.

1. The gold clause was intended to protect the bondholders against depreciation.

2. The language of the clause shows that it was intended to provide a standard of value.

3. Gold clauses have been in use in this country since before the Constitution, and the Government used them to finance the Civil War and subsequently in the exercise of its borrowing power.

4. The Court has repeatedly enforced gold clause contracts, and other courts of highest distinction have construed and enforced them as providing a measure of value.

5. The Joint Resolution contains an implied admission that the gold clause prescribes a measure of value.

II.

These contracts were lawful when made, and were made for a proper purpose, in terms which this Court for nearly half a century before the issue of these bonds had recognized as legal and repeatedly approved as binding.

1. The bonds and mortgage were made in the language the Railway Company chose.

2. The gold clause agreement was for a proper purpose, namely, to assure the purchasers of the bonds that they would get back exactly what they had paid for the bonds or its equivalent in current funds.

3. This Court for nearly half a century before the issue of these bonds had recognized agreements of this sort as legal and enforced them as made; reviewing the decisions on this subject.

III.

The *Legal Tender Cases* did not overrule *Bronson* v. *Rodes*, nor weaken its authority on this question, because the *Legal Tender Cases* refer only to contracts payable in money, simply.

IV.

Congress had no constitutional authority by the Joint Resolution of June 5, 1933, to change the terms of contracts which were valid when made.

1. The Joint Resolution involves the power to regulate the value of money, the power to borrow money, and the limitations imposed by the Fifth Amendment. It also involves the sovereign power of the states to borrow money on whatever terms they choose to make.

2. The power to regulate the value of money cannot be construed to override the borrowing power.

3. The power to regulate the value of money cannot be used in direct violation of the Fifth Amendment.

4. The Resolution encroaches upon the sovereign power of the states by changing the money contracts of states and municipalities and impairing their credit.

5. The Resolution is not an emergency measure.

6. Gold clause contracts do not obstruct the power of Congress to regulate the value of money.

7. Gold clause contracts are not inconsistent with the policy of Congress to maintain the equal power of every dollar.

8. Existing gold clause contracts, valid when made, are not, and cannot be declared by Congress to be, against public policy.

9. The Joint Resolution is not within the scope of the power to regulate the value of money.

10. If the Joint Resolution is sustained, it means that no money contracts can be made based upon any fixed standard, even if provided by law, and required to be performed in that standard.

V.

To provide that these bonds can be discharged upon payment of the nominal amount in any kind of dollars, whatever their gold value, is to take the property of one private person and to give it to another private person.

1. The obligation of the bond is to pay the gold value.

2. The due process clause of the Fifth Amendment prohibits the impairment of gold clause contracts.

ARGUMENT

I.

The gold clause not merely prescribed the kind of money in which the debt was to be paid, but it fixed a measure of the value of the bonds and a means of computing the sum due if the currency should be depreciated before the bonds were paid.

1. The gold clause was intended to be a protection against depreciation of the currency. It is only necessary here to state this proposition. No one has questioned it.

The importance of the clause is emphasized by the title and terms of the bonds and Mortgage. Every suggested construction of the clause must be tested to determine whether it is consistent with the dominant purpose of the parties to protect the bondholders against a depreciation of the currency. No construction of the gold clause can be entertained which does not give full effect to that dominant intent.

2. The words of the gold clause clearly show an intent to establish a measure or standard of value of the money to be paid if the particular kind of money specified in the clause should not be in circulation at the time of payment.

The agreement is to pay "gold coin of the United States of the present standard of weight and fineness" (R. 157); that is, the standard obtaining May 1, 1903, which was the standard fixed by the Gold Standard Act of 1900 (see *Ante*, p. 9).

The covenant in the Mortgage is to pay "in gold coin of the United States of *or equal to* the present standard of weight and fineness" (R. 186). These words in the Mortgage tend to emphasize the already clear intent that payment should be made in gold coin of the specified standard or its equivalent.

Gold clauses vary in the words used. The Government's bonds provide for payment "in gold coin of the present standard of value" (see p. 22). Others name the date instead of using the word "present." Some specifically provide for the payment of coin "or the equivalent thereof." None of these variations in phraseology are important. They all have the same meaning and purpose. The clause used in the bonds and Mortgage in this case is perhaps the clause most commonly used.

By promising to pay a specified sum "in gold coin of the present standard of weight and fineness" the obligor undertakes to pay a specified amount of money in coin having a specified bullion content or, if that is not available, to pay the equivalent in current money. The opinion of the lower Court that the agreement constituted a promise to pay in gold "as a mere commodity" (R. 123) was clearly wrong.

Thompson v. *Butler,* 95 U. S. 694.

Also, in one sense, the promise is a promise to pay a particular kind of money. No one questions that the contract can be performed by paying gold coin of the standard of weight and fineness called for, even if there should be other money, also called dollars, worth more than such gold coin. Thus if silver dollars had been at a premium on May 1, 1933, the debt could nevertheless have been paid in gold dollars of the standard of weight and fineness existing on May 1, 1903.

Bronson v. *Rodes,* 7 Wall. 229, 252.

But the gold clause is more than a promise to pay a particular kind of money; it is essential to its purpose that it be more. The words "of the present standard of weight and fineness" cannot be given any reasonable construction except that the parties thereby intended to fix a standard or measure of value, if the debt should not be paid in the exact coin agreed upon.

The words "gold coin of the *present* standard" of weight and fineness show that the parties contemplated that when the time came to pay there might be gold dollars of a new standard of weight and fineness. They must have known that if gold dollars of a new standard were introduced "gold coin of the present standard" would pass from circulation, as there could not be two standard gold dollars at the same time. By the gold clause they intended that in any such contingency the Railway Company could discharge its debt by paying the equivalent in gold value of the May 1, 1903, dollar—and, correlatively, that it must pay the equivalent so long as the equivalent could be measured in terms of current money.

The Petitioners admit at page 115 of their Brief that the parties intended that, if gold coins of a lesser standard of weight and fineness were tendered, they did not have to be accepted unless enough of them were tendered so that the gold value paid was that called for by the contract. In other words, if the new standard gold dollar of 15 5/21 grains had been coined, a tender of 1,000 new standard gold dollars in *coin* would not have paid a bond. The new dollars now circulating are the equivalent of a new coin dollar of 15 5/21 grains, both by statute and in market value. How, then, can 1,000 of the new dollars now circulating pay a debt which they could not satisfy if they were in gold coin of the present so-called standard?

A construction of the gold clause which does not acknowledge the right of the bondholders to the equivalent of the gold coin promised to be paid is not a construction, it is a nullification, of the clause.

3. The gold clause or its equivalent has been in use time out of mind and has been used not merely in money contracts between private persons, but in money contracts of this Government and in foreign countries.

Gold clauses or their equivalent have been in use in this country since before the Constitution. Examination of a

single record book of Mortgages in the Register's Office in New York County, in which mortgages were recorded for the period from December 6, 1784 to December 22, 1787, discloses seven gold clause mortgages (pp. 77, 110, 141, 146, 255, 262, 297). Of these, five contained a promise to pay "in gold or silver at its present value," which would indicate even at that time an accepted form of gold clause. The other two contained detailed specifications of the weight and value of the coin to be paid.

On March 3, 1863, to finance the Civil War, Congress authorized the issuance of bonds payable "in coin" (C. 73, 12 Stat. 709); and on March 3 and June 30, 1864, and March 3, 1865, Congress authorized the issue of further obligations of the same kind (C. 17, 13 Stat. 13; C. 172, 13 Stat. 218; C. 78, 13 Stat. 469). As these issues were made at a time of national crisis, it is perhaps not too much to say that the bond issues of 1863 and 1864 of the class now declared to be "against public policy" contributed substantially to preserve the Union.

In 1903, the draftsmen of the River and Gulf Division bonds had as a model the bonds provided for under the Gold Standard Act of March 14, 1900 (C. 41, § 2, 31 Stat. 45; U. S. Code Annotated, Title 31, Section 408). That Act provided for the sale of Government bonds "to be payable, principal and interest, in gold coin of the present standard of value."

Each of the Liberty Bond Acts providing for the issuance of bonds contained a provision reading (C. 4, 40 Stat. 35; C. 56, 40 Stat. 288; C. 44, 40 Stat. 503; C. 142, 40 Stat. 844; C. 100, 40 Stat. 1309):

> "The principal and interest thereof shall be payable in United States gold coin of the present standard of value."

Thus a second time the successful prosecution of a great war was financed by the use of the gold clause. Shall we never have another national crisis?

But the use of the gold clause has not been confined to this country. The cases of the Serbian Loans and the

Brazilian Loans before the Permanent Court of International Justice, and the *Feist* case before the British House of Lords, which are discussed below, illustrate its use abroad.

Indeed, Article 262 of the Versailles Treaty provides

> "Any monetary obligation due by Germany arising out of the present Treaty and expressed in terms of gold marks shall be payable at the option of the creditors in pounds sterling payable in London; gold dollars of the United States of America payable in New York; gold francs payable in Paris; or gold Lire payable in Rome.
>
> "For the purpose of this Artiele the gold coins mentioned above shall be defined as being of the weight and fineness of gold as enacted by law on January 1, 1914."

The Court will notice that this language of the Treaty of Versailles is identical with the clause involved in this case except that the Treaty uses the date and these bonds use the word "present" to fix the time.

Will it be contended that the great lawyers of all nations assembled in Paris agreed upon an inept clause to protect the Allied and Associated Powers against payment of the reparations in depreciated money?

We instance these uses of the gold clause to show that it has been used, in identically or substantially the form in which it is found in these bonds, by those having the greatest interest in making the words used mean what they were intended to mean, and by those having the greatest ability and experience in the use of words.

4. This Court has repeatedly enforced gold clause contracts according to their true intent; and other courts of the highest distinction have construed and enforced them as a measure of value.

(a) We reserve for the next following point in this brief a full discussion of the decisions of this Court on gold clause contracts. Under the present heading it seems sufficient to remind the Court of *Gregory* v. *Morris,* 96 U. S. 619, decided

March 25, 1878, in which the Court held that the holder of a gold coin contract could recover a judgment in currency in an amount to be measured by the value in current money of the gold coin agreed to be paid.

(b) The Permanent Court of International Justice decided two cases on this subject, one involving Serbian loans which were payable in gold francs, the other involving Brazilian loans which were payable in gold francs.

Case of Serbian Loans was tried and submitted to the Court on May 15th, 16th, 17th, 18th, 22nd, 23rd and 24th. *Case of Brazilian Loans* was tried and submitted on May 25th, 27th, 28th and 29th. Both cases were decided July 12, 1929. Twelve Judges heard the *Case of Serbian Loans* and the decision was rendered by a vote of nine to three. Eleven Judges heard the *Case of Brazilian Loans,* and the decision was rendered by a vote of nine to two.

The opinions are published in full in "Publications de la Cour Permanente de Justice Internationale," Serie A-Nos. 20/21, published by A. W. Sijthoff's Publishing Company. The *Case of Serbian Loans* is at pages 5-89, and the *Case of Brazilian Loans* at pages 91-155. The quotations below are from this publication.

We shall not attempt to summarize all the facts in the two cases, as each case involved a number of different bond issues. But certain salient facts stand out in both cases:

Each case involved bond issues providing for payment "in gold francs"; the additional safeguard "of the present standard of weight and fineness" or "of the present standard of value" was omitted, as one of the dissenting Judges pointed out (p. 128).

Technically, the French francs, the gold value of which the Court found to be the measure or standard of value adopted by the parties, was not a gold unit at all. It was a silver unit. Therefore the Court looked into the statutes

of France providing for gold coins and thereby determined the weight and fineness of the French franc in gold (pp. 33-34).

For a long time, stated by one of the dissenting Judges to have been fourteen years in the case of the Serbian bonds (p. 66), and ten years in the case of the Brazilian bonds (p. 143), the bondholders had accepted interest in the nominal amount of French paper francs.

The effect of the decisions was to require each of the two Governments to pay about five times as many French paper francs, or new French gold francs, as they would have been required to pay if the Court had not held that the gold clause meant a "gold standard of value."

Yet in both cases the Court decided in favor of the French Government, representing the bondholders.

In the *Case of Serbian Loans,* the Court said (p. 32):

> *"Significance of the term 'gold francs'.*—It is urged that the promise to pay gold francs, or what is called the 'gold clause,' is without legal significance. It is said that there was no international gold franc; that the reference was to money and not to gold as merchandise; that the reference must be taken to be to French money; and that the French monetary unit was silver and that there was no 'gold franc' as a monetary unit. Hence it is insisted that, despite the terms of the engagement, the promise must be construed as one to pay in French currency.
>
> "As it is fundamental that the terms of a contract qualifying the promise are not to be rejected as superfluous, and as the definitive use of the word 'gold' cannot be ignored, the question is: What must be deemed to be the significance of that expression? It is conceded that it was the intention of the Parties to guard against the fluctuations of the Serbian dinar, and that, in order to procure the loans, it was necessary to contract for repayment in foreign money. But, in so contracting, the Parties were not content to use simply the word 'franc,' or to contract for payment in French francs, but stipulated for 'gold francs.' *It*

> *is quite unreasonable to suppose that they were intent on providing for the giving in payment of mere gold specie, or gold coins, without reference to a standard of value.* The treatment of the gold clause as indicating a mere modality of payment, without reference to a gold standard of value, would be, not to construe but to destroy it."

After deciding that the parties adopted the gold franc as a standard of value, the Court, answering the argument that the parties had not foreseen the depreciation of the French franc, said (p. 34),—

> "As this standard of value was adopted by the Parties, it is not admissible to assert that the standard should not govern the payments because the depreciation in French currency was not foreseen, or, as it is insisted, could not be foreseen at the time the contracts were made. The question is not what the Parties actually foresaw, or could foresee, but what means they selected for their protection. To safeguard the repayment of the loans, they provided for payment in gold value having reference to a recognized standard, as above stated."

Particularly significant was the Court's answer to the contention that for extended periods "gold specie in francs or a franc at gold parity was not quoted on the money market" (p. 36),—

> "The conclusion at which the Court has thus arrived is not affected by the fact that, for more or less extended periods gold specie in francs or a franc at gold parity was not quoted on the money market, as was the case at the time when the loans were issued; for the value can always be fixed either by comparison with the exchange rates of currency of a country in which gold coin is actually in circulation, or, should this not be possible, by comparison with the price of gold bullion. Once the gold value is fixed, it is its equivalent in money in circulation which constitutes the amount which is payable at Belgrade, Paris, Brussels and Geneva and at the other places

enumerated in the bonds, in the local currency at the sight rate of exchange on Paris."

The acceptance by the bondholders of paper francs was held not to affect the contract (p. 38),—

> "This conduct of the Parties, that is, the acceptance by the bondholders of depreciated paper francs, is invoked upon two distinct grounds. The first is that this method of executing the contract should be deemed to be controlling in determining the intention of the Parties, in accordance with the familiar principle applicable to ambiguous agreements. On this principle it is argued that the Parties did not intend by the loan contracts to provide for payment in gold francs. But the loan contracts are not ambiguous on this point. They are clear and definite. The fact that gold francs were not paid cannot be admitted to show that gold francs were not promised. If the subsequent conduct of the Parties is to be considered, it must be not to ascertain the terms of the loans, but whether the Parties by their conduct have altered or impaired their rights."

The Court then proceeded to establish that there was no estoppel.

Answering the defense of the impossibility of performance, the Court said (p. 40):

> "It is contended that under the operation of the forced currency regime of France, pursuant to the law of August 5th, 1914, payment in gold francs, that is, in specie, became impossible. But if the loan contracts be deemed to refer to the gold franc as a standard of value, payments of the equivalent amount of francs, calculated on that basis, could still be made. Thus, when the Treaty of Versailles became effective, it might be said that 'gold francs,' as stipulated in Article 262, of the weight and fineness as defined by law on January 1st, 1914, were no longer obtainable, and have not since been obtainable as gold coins *in specie*. But it could hardly be said that for this rea-

> son the obligation of the Treaty was discharged in this respect on the ground of impossibility of performance. That is the case of a treaty between States, and this is a case of loan contracts between a State and private persons or lenders. But, viewing the question, not as one of the source or basis of the original obligation, but as one of impossibility of performance, it appears to be quite as impossible to obtain 'gold francs' of the sort stipulated in Article 262 of the Treaty of Versailles as it is to obtain gold francs of the sort deemed to be required by the Serbian loan contracts."

Article 262 of the Versailles Treaty cited in the above quotation is the same Article from that Treaty which is quoted above on page 23.

In the *Case of Brazilian Loans,* the Court disposed of one of the arguments which has been advanced in this case as follows (pp. 115-116):

> "*Significance of the gold clauses.*—One argument against the efficacy of the provision for gold payments is that it is simply a clause of 'style,' or a routine form of expression. This, in substance, would eliminate the word 'gold' from the bonds. The contract of the Parties cannot be treated in such a manner. When the Brazilian Government promised to pay 'gold francs,' the reference to a well-known standard of value cannot be considered as inserted merely for literary effect, or as a routine expression without significance. The Court is called upon to construe the promise, not to ignore it."

Answering the argument of "force majeure" the Court said (p. 120):

> "'Force Majeure'—The economic dislocation caused by the Great War has not, in legal principle, released the Brazilian Government from its obligations. As for gold payments, there is no impossibility because of inability to obtain gold coins, if the promise be regarded as one for the payment of gold value. The equivalent in gold value is obtainable."

Particularly interesting is the opinion of one of the dissenting Judges, DE BUSTAMANTE, for it shows that he probably would have agreed with the majority on the matter of construction if the clause used had contained the words "of the present standard of weight and fineness." He said (p. 128):

> "But while, on the one hand, gold francs might simply be spoken of for the purpose of payment, it would, on the other hand, be possible to take steps and make provision for fixing the meaning and scope of these words and to decide the course to be adopted, if the gold franc vanished from monetary circulation.
>
> "It was possible, for instance, to stipulate, and this is frequently done, that the payments must be effected in gold francs of the same weight and standard as that of the franc in circulation at the time in France, or to take other precautions widely known in the business world and very often adopted where the intention of the Parties is to avoid indirectly the consequences of certain rules established by legal enactments of a local character."

(c) The British House of Lords decided December 15, 1933, the case of *Feist, Appellant and Société Intercommunale Belge d'Electricité, Respondents,* L. R. (1934) A. C. 161.

The *Feist* case involved the construction of a gold clause in bonds issued by the respondent, a Belgian corporation, in which the respondent promised to pay "to the bearer, at the registered office of M. Samuel & Company, Limited * * * in London * * * the sum of £100 in sterling in gold coin of the United Kingdom of or equal to the standard of weight and fineness existing on September 1st, 1928" (pp. 165-166). The interest was payable at the same place in the same gold coin.

The respondents claimed they were entitled to satisfy the principal and interest "secured by the bond by tendering whatever might at the due date of payment be good legal tender for the nominal amount of the bond or coupons as the

case may be" (p. 168); but the Court held that it was obvious that such a claim would not give effect to the language of the bond; and that, if the bond were so payable, *"these words need in this view never have been inserted at all"* (pp. 168-169). The Court briefly stated and overruled the views of the Judges of the lower Courts, and *held that the gold clause was "the means by which the amount of that indebtedness is to be measured and ascertained"* (p. 172). The Court said, all the Judges concurring (pp. 168-169, 173-174, italics ours):

> "The Company claim, and it has so been decided in both Courts below, that they are entitled to satisfy the principal moneys and interest secured by the bond by tendering whatever might at the due date of payment be good legal tender for the nominal amount of the bond or coupon, as the case may be. It is obvious that this decision deprives of all effect the words which occur in clauses 1 and 2 of the bond, viz.: 'in gold coin of the United Kingdom of or equal to the standard of weight and fineness existing on September 1st, 1928.' These words (which merely for convenience I will call the gold clause) need in this view never have been inserted at all. * * *
>
> "We were in the course of the argument referred to certain decisions and judgments in cases which came before the Permanent Court of International Justice sitting at The Hague. I do not, I need hardly say, treat these as in any way binding upon us. Indeed the relevant facts and words under consideration were very different from those which have been under consideration here. I would like, however, to cite one passage as stating happily and succinctly the considerations and principles which have influenced me in arriving at the conclusion which I have reached. It occurs in the judgment dealing with certain Serbian loans stated to be payable both as to principal and interest in gold. It runs thus: 'As it is fundamental that the terms of a contract qualifying the promise are not to be rejected as superfluous, and as

> the definitive use of the word "gold" cannot be ignored, the question is: What must be deemed to be the significance of that expression? It is conceded that it was the intention of the parties to guard against the fluctuations of the Serbian dinar, and that, in order to procure the loans, it was necessary to contract for repayment in foreign money. But, in so contracting, the parties were not content to use simply the word "franc" or to contract for payment in French francs, but stipulated for "gold francs." It is quite unreasonable to suppose that they were intent on providing for the giving in payment of mere gold specie, or gold coins, without reference to a standard of value. *The treatment of the gold clause as indicating a mere modality of payment, without reference to a gold standard of value, would be, not to construe but to destroy it.'"*

And so the Court held that the bonds were payable in pounds according to the gold value of the nominal amount of each respective payment; "and that accordingly every 'pound' comprised in the nominal amount of each such payment must be treated as representing the price in London in sterling (Calculated at the due date of payment) of 123.2744 grains of gold of the standard of fineness specified in the first schedule of the Coinage Act of 1870" (p. 174).

The conclusions reached by the Permanent Court and by the House of Lords represent the accepted view everywhere except in Germany, whose courts profess to see a difference between a "gold coin" clause and a "gold value" clause. In *Comparative and International Aspects of American Gold Clause Abrogation,* XLIV Yale Law Journal, at pp. 56-57, Professor Nussbaum says:

> "The German Reichsgericht, to be sure, has held that if a debtor promises to pay a certain amount in gold coins, no gold value clause is to be implied. Relying upon a strained interpretation of the German Civil Code, this court granted discharge to certain

gold debtors merely on the ground that after the outbreak of the war, gold coins had gone out of circulation. Similarly the Court of King's Bench and the Court of Appeal of England, in deciding *Feist* v. *Société Intercommunale Belge d'Electricité,* refused to recognize the existence of an implied gold value clause.

"But these decisions do not represent the majority view and are unsatisfactory. From a strict contractual point of view, the aim of the gold clause is to secure to the creditor in all events an amount of legal tender equal to the actual market value of the promised gold coins. Otherwise the gold clause would lose its effect in the very contingency in anticipation of which it had been inserted; it would, in fact, be wholly inoperative.

"For this reason, the Supreme Courts of Denmark and Finland, the Greco-Bulgarian Mixed Arbitral Tribunal, the Permanent Court of International Justice, and the English House of Lords (reversing the decisions of the two lower British courts in the *Feist* case) have all held that a gold value clause must be implied. Of particular importance is the decision of the House of Lords, for the phraseology of the gold clause involved in the *Feist* case is exactly the same as that of the customary American one."

The decisions of the Permanent Court and the House of Lords have, of course, no bearing on the constitutional power of Congress to pass the Joint Resolution of June 5, 1933. But as to the proper construction of the contract they are "persuasive, as coming from two great and learned tribunals" (p. 124). They are really more than that, because their reasoning is so transparently honest and undeniably sound that even the Court below said (R. 125),—

"It may well be and arguendo conceded, that when resort is had for guidance to abstract justice and cold logic, the conclusions reached in each of the cases relied on by interveners are impeccable."

5. The Joint Resolution of June 5, 1933, contains an implied admission that the gold clause prescribes a measure of recovery.

Both in the preamble and in Section 1 of the Joint Resolution it is made clear that it is addressed to "any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, *or in an amount in money of the United States measured thereby*" (*ante*, p. 12).

Thus the draftsmen of the Resolution revealed their expectation that this Court would construe the gold clause as it had been construed in *Gregory* v. *Morris*, 96 U. S. 619, and by foreign Courts.

Congress did not undertake to distinguish between gold clauses according to their phraseology. It was not interested in whether a gold clause provided for payment in "gold coin of the present standard of weight and fineness" or "gold coin of the present standard of value," or whether the promise to pay the equivalent was separately and literally expressed or merely a matter of necessary implication. Congress undertook to alter the terms of all gold clause contracts, however phrased, and to attempt to invalidate every promise which "purports to give the obligee a right to require payment in gold * * * or in an amount of money of the United States measured thereby." Congress did not even provide that if the Resolution were partially invalid the remainder should not thereby be affected.

The plain purpose and intent of the gold clause, therefore, was to protect the bondholders against depreciation of the currency and to furnish a measure of the value of the bonds and a means of computing the sum due if the currency should be depreciated before the bonds were paid; and this was intended to be both its meaning and its effect.

II.

These contracts were lawful when made, and were made for a proper purpose, in terms which this Court for nearly half a century before the issue of these bonds had recognized as legal and repeatedly approved as binding.

1. The Railway Company in its own language, not the bondholders, determined upon and fixed all the terms and conditions of these bonds and of the Mortgage given to secure them, and offered them for sale to the public on its own terms. The public bought the bonds on the terms and conditions the Railway Company put in them, and in the Mortgage securing them. In buying the bonds the purchasers paid the Railway Company for them gold coin of the United States of the standard of weight and fineness on May 1, 1903, or its equivalent in value. As was only fair and right, the Railway Company agreed to pay back to the holder of each bond on the date it became due just what the Company had received from him, namely, $1,000 gold coin of the United States of the then standard of weight and fineness, or its equivalent. This being so, can the Debtor Company now do less than the Railway Company agreed to do? The bondholders do not ask it to do more.

2. The agreement to pay gold coin of the United States of the then standard of weight and fineness was for a proper purpose, namely, to assure the purchasers of the bonds that when they became due the bondholders would get back exactly what they had paid for the bonds, or its equivalent in current funds. Agreements of this kind were in common use at the time, and had been for more than a century. The Government put similar terms of payment in the bonds it issued. Nobody, so far as we can find, ever before questioned the propriety of such agreements or doubted their legality.

3. This Court for nearly half a century before the issue of these bonds had recognized agreements of this sort as legal, repeatedly approved them as binding, and rigidly enforced their terms.

Bronson v. *Rodes,* 7 Wall. 229, decided in February, 1869, is the leading case on this subject. It has often been cited as authority for the validity of such contracts and their enforcement. In that case, in 1851 was made a bond, payable "in gold and silver coin, lawful money of the United States." The bond was secured by a mortgage on real estate which Rodes bought, and assumed and agreed to pay the mortgage debt. He offered to pay, in 1865, in current funds "a sum nominally equal to the principal and interest due upon the bond and mortgage." At that time a dollar in coin was equivalent in market value to $2.25 in United States notes. Bronson sued him for the recovery of gold and silver coin, lawful money of the United States, which the bond called for, but the lower Court gave him judgment for only the nominal sum due in United States notes. This Court reversed the lower Court and held Bronson was entitled to be paid according to the terms of his contract. The Court which decided the case was composed of Chief Justice CHASE and Associate Justices NELSON, GRIER, CLIFFORD, SWAYNE, MILLER, DAVIS and FIELD. Mr. Chief Justice CHASE, in delivering the opinion of the Court, said (p. 245),—

> "It is the appropriate function of courts of justice to enforce contracts according to the lawful intent and understanding of the parties";

and after referring to the history of the currency of the Country at the time of making the note the Court continued (p. 246),—

> "The terms of the contract must have been selected, therefore, to fix definitely the contract between the parties and to guard against any possible claim

> that payment, in the ordinary currency, ought to be accepted."

Then, after further historical discussion, the Court said (pp. 250, 254),—

> "A contract to pay a certain number of dollars in gold and silver coin is, therefore, in legal import nothing less than an agreement to deliver a certain weight of standard gold, to be ascertained by a count of coins, each of which is certified to contain a definite portion of that weight. * * *
>
> "It follows that the tender under consideration was not sufficient in law, and that the decree directing satisfaction of the mortgage was erroneous."

All the Judges concurred in the decision, except Mr. Justice MILLER, who disagreed with the Court on the intent of the parties as expressed in the note.

Later, in *Gregory* v. *Morris,* 96 U. S. 619, referred to more fully below, the Court made it clear that it did not consider a gold coin contract simply a bullion contract, but held, in effect, that a gold coin contract was a special form of money contract in which the value of the gold contracted to be paid was to be the measure of the recovery in money.

In March, 1869, the Court decided the case of *Butler* v. *Horwitz,* 7 Wall. 258, involving payment under a lease which called for "annual rent of fifteen pounds current money of Maryland payable in English gold and coins weighing five pennyweight and six grains at thirty-five shillings each, and other gold and silver at their present weights and rates established by Act of Assembly." The Court said that "the obvious intent of the contract was to secure the payment of a certain rent in gold and silver" and thereby to avoid the fluctuations to which the currency of the country had been subject, and also future fluctuations; and citing *Bronson* v. *Rodes* as an authority, the Court held that "the damages should have been assessed at the sum agreed to be due, with interest, in gold and silver coin."

In *Bronson* v. *Kimpton,* 8 Wall. 444, decided November 29, 1869, the following is the entire and unanimous opinion of the Court delivered by Mr. Chief Justice CHASE,—

> "The writ of error in this case brings before us no other questions than those which have been already considered and determined in the case of *Bronson* v. *Rodes* and *Butler* v. *Horwitz.*
>
> "The suit in the state court was brought by Kimpton, to compel satisfaction of a mortgage executed by him to Bronson, on the ground that it had been paid. The mortgage was given to secure a bond for the payment of a certain sum in gold and silver coin, lawful money of the United States. The payment relied on was a tender of United States notes, equal in nominal amount to the sum due on the bond and mortgage. The Supreme Court of New York held the tender sufficient, and adjudged satisfaction; and this judgment was affirmed by the Court of Appeals, and is now here for review.
>
> *"The principles settled in the cases referred to require the reversal of this judgment, and it is accordingly reversed. The case will be remanded for further proceedings."*

In *Dewing* v. *Sears,* 11 Wall. 379, the Court directed the entry of a judgment for "coined dollars and parts of dollars."

After the great battle over the validity of the Legal Tender Act in *Knox* v. *Lee,* 12 Wall. 457, which was finally decided May 1, 1871, the Court, January 22, 1872, decided the case of *Trebilcock* v. *Wilson,* 12 Wall. 687, which involved the payment of a note which was "payable in specie" and was secured by a real estate mortgage. The Court said that (p. 695, italics ours)

> "the terms, 'in specie,' * * * mean that the designated number of dollars in the note shall be paid in so many gold and silver dollars of the coinage of the United States * * *. This being the meaning

> of the term in specie the case is brought directly within the decision of *Bronson* v. *Rodes*, 7 Wall. 229, where it was held that express contracts, payable in gold or silver dollars, could only be satisfied by the payment of coined dollars, *and could not be discharged by notes of the United States declared to be a legal tender in payment of debts.*"

Mr. Justice BRADLEY dissented for the reasons stated in his opinion in the Legal Tender cases, and Mr. Justice MILLER dissented on the ground of his dissent in *Bronson* v. *Rodes*.

Gregory v. *Morris*, 96 U. S. 619, is perhaps the most important of all of the gold clause cases. It involved a lien on cattle payable in gold coin. While it was a replevin action, the recovery was to be measured by the lien in gold coin. The Court said (pp. 624-626, italics ours):

> "Gregory himself asked the court to charge that 'The jury must compute damages and return their verdict in dollars and cents.' This was undoubtedly correct, and it was done; but he further asked the court to say that 'No agreement or contract to pay a certain number of dollars in gold can be enforced. The national currency is by law a legal tender at its face value for all debts and demands, public or private, except duties on imports and interest on the public debt.' This was in conflict with *Bronson* v. *Rodes*, and therefore properly refused.
>
> "But the court did say to the jury, that, if they found the contract on the part of the plaintiff was to pay a certain sum of money in gold, they should compute the difference between gold and currency, and render their verdict in dollars and cents in currency; and in this we see no error. While we have decided that a judgment upon a contract payable in gold *may* be for payment in coined dollars, we have never held that in all cases it *must* be so. While gold coin is in one sense money, it is in another an article of merchandise. Gregory was required to discharge his debt in gold before he could rightfully take

the property into his possession under the replevin. If the payment had been so made, Morris would have had his coin at that time to use as money or merchandise, according to his discretion. But it was not made; and Gregory, by his wrongful act in taking the property, subjected himself to damages. If the contract had been in terms for the delivery of so much gold bullion, there is no doubt but the court might have directed the jury to find the value of the bullion in currency, and bring in a verdict accordingly. But we think, as was thought in *Bronson* v. *Rodes*, such a case is not really distinguishable from this. The question is not whether Gregory had the right to pay in gold dollars after his debt had become due, but whether, having wrongfully got the property into his possession without payment at all, the damages he is required to pay on account of this wrongful act *must*, as a matter of law, be estimated in gold, or whether they *may* be in currency. *We think it clear that, under such circumstances, it was within the power of the court, so far as Gregory was concerned, to treat the contract as one for the delivery of so much gold bullion; and, if Morris was willing to accept a judgment which might be discharged in currency, to have his damages estimated according to the currency value of bullion.* Certainly, if Morris had in good faith sold the cattle under his power of sale for currency, and received payment in that kind of money, he would have been entitled to convert the currency into gold before crediting it upon his debt. *So here, if, with the approbation of the court, he takes a judgment that may be discharged in currency, the judgment should be for an amount which would be the equivalent in currency of the specified amount of coin as bullion.* This was the rule adopted by the court, and we think it correct."

In *United States* v. *Erie Railway Co.*, 106 U. S. 327, and 107 U. S. 1, The Erie Railway Company had failed to deduct the amount of taxes from the interest on bonds held

by alien non-resident holders. The Government sued for the taxes, and this Court first directed judgment for the equivalent in lawful money of the sterling taxes payable. At the time when the taxes were payable, legal tender money was at a discount in terms of gold and sterling but the Court made no allowance for "the currency value of the pound sterling when the taxes fell due" for the reason that no claim had been made therefor. On rehearing the Court said (107 U. S. 2-3):

> "This suit is, therefore, for the debt which the company owes, to wit, five per cent of the pounds sterling it has paid as interest on its bonds. If the debt had been paid at the time it was due, the officers chargeable with the collection could have accepted nothing but legal-tender currency, and to an amount equivalent to the value of the coin which was owing. In other words, the debt was in the nature of an obligation to pay in coin, but which the government would not receive in anything but legal-tender currency of equal value with the coin. This is a suit for the recovery of that debt as a debt. If there were now any difference in value between coin and currency, it would have been proper to render the judgment for the coin or its equivalent in currency. *Gregory* v. *Morris*, 96 U. S. 619."

Other decisions illustrating the action of this Court in gold clause cases,—

> *The Steamship Telegraph* v. *Gordon*, 14 Wall. 258 (1872);
> *The S. S. "Emily B. Souder"* v. *Pritchard*, 17 Wall. 666 (1873);
> *Thompson* v. *Butler*, 95 U. S. 694 (1878).

In every one of the cases involving a promise to pay in gold coin this Court insisted upon the entry of judgment either for gold coin or for its equivalent in currency.

It is perfectly clear, therefore,

1. That these contracts proposed by the Railway Company in language chosen by it, were lawful when made, and were made for a proper purpose in terms which this Court recognized as legal in 1868 in *Bronson* v. *Rodes,* and approved in subsequent cases in which *Bronson* v. *Rodes* was cited as authority for the Court's decisions;

2. That in 1903, when these contracts were made, it was settled that a provision for payment in gold coin did not specify a means of payment merely, but provided a standard of value which should be the measure of recovery; and

3. That the obligee of a gold contract was entitled to a judgment for gold coin or to a judgment for an amount which would be the equivalent in currency of the specific amount of gold agreed to be paid.

III.

The Legal Tender Cases did not overrule *Bronson* v. *Rodes* nor weaken its authority on this question, because those cases referred only to contracts payable in money, simply.

The contracts before the Court in every legal tender case related solely to the payment of money, simply, not to the payment either of specie or of gold coin of the United States of the present standard of weight and fineness, nor to any other form of payment except money, simply; and the Court in every legal tender case laid emphasis upon the fact that the Court's decision related solely to contracts payable in money, simply, and not to contracts payable in dollars of a specified kind or to be measured in a specified way.

In *Knox* v. *Lee*, 12 Wall. 457, (May, 1871) the leading legal tender case, the majority opinion by Mr. Justice STRONG says (p. 549, italics ours):

> "Every contract for the payment of *money, simply,* is necessarily subject to the constitutional power of the Government over the currency, whatever that power may be, and the obligation of the parties is, therefore, assumed with reference to that power."

And the majority of the Court held that damages for the conversion of sheep in March, 1863, were payable, not in gold, but in legal tender notes of the United States. The majority opinion did not refer to *Bronson* v. *Rodes* at all, nor did any of the elaborate and learned dissenting opinions, except that Mr. Justice CLIFFORD in his dissenting opinion said (p. 624):

> "Repeated decisions of this court, of recent date (*Bronson* v. *Rodes,* 7 Wall 248; *Butler* v. *Horwitz,* 7 Wall. 259; *Bank* v. *Supervisors,* 7 Wall. 28), have established the rule that contracts to pay coined dollars can only be satisfied by the payment of such money, which is precisely equivalent to a decision that such notes as those described in the Acts of Congress in question are not the money recognized and established by the Constitution as the standard of value, as the money so recognized and established, if the contract is expressed in dollars, will satisfy any and every contract between party and party."

The latest legal tender case, *Juillard* v. *Greenman,* 110 U. S. 421 (March, 1884), involved the purchase price of an ordinary sale of cotton without any agreement as to the kind of money in which the price should be paid. The buyer tendered the price in United States legal tender notes, but the seller demanded payment in specie. The Court held against the seller on the ground that the sale was for money,

simply, and that, therefore, a tender of the nominal amount of current funds was good. In its opinion by Mr. Justice GRAY, the Court, after elaborately discussing the constitutional authority of Congress, concluded by saying at page 449 (italics ours),—

> "So, under the power to coin money and to regulate its value, Congress may (as it did with regard to gold by the act of June 28th, 1834, ch. 95, and with regard to silver by the act of February 28th, 1878, ch. 20) issue coins of the same denominations as those already current by law, but of less intrinsic value than those, by reason of containing a less weight of the precious metals, and thereby enable debtors to discharge their debts by the payment of coins of the less real value. A contract to pay a certain sum in money, *without any stipulation as to the kind of money in which it shall be paid,* may always be satisfied by payment of that sum in any currency which is lawful money at the place and time at which payment is to be made. 1 Hale P. C. 192-194; Bac. Ab. Tender, B. 2; Pothier, Contract of Sale, No. 416; Pardessus, Droit Commercial, Nos. 204, 205; *Searight* v. *Calbraith,* 4 Dall. 324. As observed by Mr. Justice STRONG, in delivering the opinion of the court in the *Legal Tender* cases, 'Every contract for the payment of money, *simply,* is necessarily subject to the constitutional power of the government over the currency, whatever that power may be, and the obligation of the parties is, therefore, assumed with reference to that power.' 12 Wall. 549."

Moreover, the Court itself which decided the leading *Legal Tender Cases* made it perfectly clear that the legal tender decisions did not apply to contracts payable in gold value; for that same Court, less than a year and at the next term after its decision in *Knox* v. *Lee* expressly held in *Trebilcock* v. *Wilson,* 12 Wall. 687, that a contract payable in specie "could not be discharged by notes of the

United States declared to be a legal tender in the payment of debts."

It is clear, therefore, that the *Legal Tender Cases* have no application to any contract except contracts for the payment of money, simply; that they were not intended to weaken, and did not weaken, the authority of *Bronson* v. *Rodes* on this subject; and that they had no application to contracts payable in "gold coin of the United States of the present standard of weight and fineness."

IV.

Congress had no constitutional authority, by the joint resolution of June 5, 1933, to change the terms of contracts which were valid when made.

Preliminary to a discussion of this Joint Resolution and its validity, we remind the Court *"that a legislative declaration of facts that are material only as to the ground for enacting a rule of law * * * may not be held conclusive by the courts,"*

Block v. *Hirsh,* 256 U. S. 135, 154 (1921).

> "In this country written constitutions were deemed essential to protect the rights and liberties of the people against the encroachments of power delegated to their governments, and the provisions of Magna Carta were incorporated into Bills of Right. They were limitations upon all the powers of government, legislative as well as executive and judicial. * * * Applied in England only as guards against executive usurpation and tyranny, here they have become also bulwarks against arbitrary legislation;"

Hurtado v. *California,* 110 U. S. 516, 531-532 (1884).

> "It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon."
>
> *Monongahela Navigation Co.* v. *United States,* 148 U. S. 312, 325 (1893).

> "To sustain the individual freedom of action contemplated by the Constitution, is not to strike down the common good but to exalt it; for surely the good of society as a whole cannot be better served than by the preservation against arbitrary restraint of the liberties of its constituent members."
>
> *Adkins* v. *Children's Hospital,* 261 U. S. 525, 561 (1923).

Keeping in mind that the gold clause was agreed upon for the purpose of conserving the real value of the bonds against a possible depreciation of the currency, and of measuring the amount of the debt if the currency should become depreciated before the bonds were paid, let us look at the Joint Resolution.

The Joint Resolution strikes out from all money contracts any provision that the debt should be measured by gold value. Its purpose was to rewrite all such contracts, whether Government obligations, state or municipal bonds, or private debts, and to make them read as if no specific measure of the debt had in fact been agreed to. It undertook to do this, notwithstanding that the measure of value agreed upon was a standard which had been established by the Government itself (*ante,* p. 9). And the Resolution undertook to do this on the theory that Congress was thereby exercising its power to regulate the value of money.

A careful consideration of this Joint Resolution shows that it does not involve the regulation of the value of money;

that its real purpose, intent and direct effect are directly and solely, not indirectly nor incidentally, to change the terms of contracts which were valid when made, in that it requires the creditor to accept in settlement less than the creditor paid for his bonds and less than the debtor agreed to pay back; and that it is not responsive to any constitutional power vested in Congress, but is the arbitrary exercise of legislative authority without any basis in constitutional right.

1. The Joint Resolution directly involves two constitutional grants of power,—(1) the power to "coin money, regulate the value thereof," and (2) the power to "borrow money on the credit of the United States,"—and one limitation of power, namely, the limitation imposed by the Fifth Amendment. It also directly involves an encroachment by the Federal Government on the sovereign power of the states.

2. No one constitutional power can be construed to override another. The power to borrow money is as important as the power to coin money and regulate the value thereof. Hence what Congress has done in the exercise of its power to borrow money it cannot undo in the exercise of its power to coin money and regulate the value thereof. When, therefore, during the war and at other times Congress borrowed money on the credit of the United States and promised to pay it back in dollars "of the present standard of value," it was exercising a power which the Constitution gave it; therefore how could Congress afterwards say the contracts it then made in the exercise of its power to borrow money are now contrary to public policy?

If it were true that such contracts so made under the borrowing power really interfered with the power of Congress to coin money and regulate the value thereof, that the

two powers conflicted and that the coinage power limited the borrowing power, *this would mean that no Congress ever had or could have the power to issue bonds containing a promise to repay the money borrowed in coin or dollars of any agreed standard of value.* If this were true, then the Congress of 1863 and 1864 had no power to finance the last campaigns of the Civil War by issuing bonds payable "in coin" (*ante*, p. 22); the Congress in 1917 and 1918 had no power to finance the World War by issuing bonds payable "in gold coin of the present standard of value" (*ante*, p. 22); and every Congress which has issued bonds since February 4, 1910, has made a promise it had no power to make (C. 25, 36 Stat. 192; Title 31, U. S. C. § 768). And neither the present Congress nor any future Congress can ever issue bonds containing a binding obligation to repay the debt measured by the standard of value which prevailed when the debt was contracted.

Thus the wholly unwarranted scope which the Congress gives to the power to "coin money, regulate the value thereof," would, if it were the true scope of that power, make the borrowing power of Congress, which is at least equally important, an ineffective thing.

3. Similarly, the power to regulate the value of money cannot be used in direct violation of the limitations imposed upon Congress by the Fifth Amendment. If by this Resolution Congress were really exercising the power to regulate the value of money and the legitimate exercise of that power indirectly or incidentally impaired the obligations of gold clause contracts, a different question would be presented. But the Resolution is not and does not purport to be a regulation of the value of money, nor is its effect on these contracts indirect or incidental. On the contrary, its sole purpose and its effect are, not to regulate the value of money, but directly and immediately, not indirectly nor incidentally,

to change these contracts by destroying their most valued obligation. Thus the Resolution not only undertakes to restrict the expressed and vastly important power of Congress to borrow money on the credit of the United States, but it directly violates the limitation of power imposed by the Fifth Amendment.

4. Moreover, by this Resolution the Federal Government directly encroaches upon the sovereign power of the states by interfering with their power to borrow money on whatever terms they choose to make, by changing the terms of the contracts which they have made in borrowing money, by impairing their credit, and by interfering with and hindering their future financing.

In the exercise of their sovereign power states, and municipalities under the authority of the states, have made gold clause contracts in vast sums. They have done this in the exercise of their sovereign power to borrow money for state and municipal purposes on whatever terms they chose to make. The Federal Government has no authority to interfere with them in this exercise of their sovereign power. As this Court said in the *Pollock* case,—

> "* * * under the fundamental law, as to the power to borrow money, neither the United States on the one hand, nor the States on the other, can interfere with that power as possessed by each and an essential element of the sovereignty of each."
>
> *Pollock* v. *Farmers Loan & Trust Co.*, 157 U. S. 429, 585.

The Comptroller of the City of New York advises us that December 31, 1933, the city had outstanding gold clause contracts aggregating $1,632,543,608.48. These contracts were made and were to be performed in the standard of value Congress had fixed and which was in use at the time the con-

tracts were made. Did the city not have a right to make such contracts? May not a state or municipality in its money dealings use the standard of value Congress has fixed both for borrowing money and for paying it back? Or must it use one standard of value for borrowing and another standard for paying back, if another standard prevails when the debt is due? Do the money contracts of states and municipalities depend upon the constitutions and laws of the states, or do they depend upon the will of Congress?

5. This Resolution is not and does not purport to be an emergency measure. The preamble says, the existing emergency has disclosed that contracts which require payment in gold value obstruct the power of Congress to regulate the value of money and are inconsistent with the policy of Congress to maintain the equal power of every dollar. That is, Congress merely says it has found out from the emergency that such contracts have the effect stated in the preamble.

Besides, if this were an emergency measure it would end with the emergency, and then the Railway Company would have to pay these bondholders what it agreed to pay. But it purports to be legislation for all time.

Compare *Block* v. *Hirsch*, 256 U. S. 135;
Home Building & Loan Association v. *Blaisdell*,
290 U. S. 398, 425, 440-441.

6. This Resolution says these gold clause contracts "obstruct the power of Congress to regulate the value of money." Gold clause contracts have been in common use since before the adoption of the Constitution. During all this time Congress has regulated the value of money. It has coined money and regulated the value thereof by stamping the monetary value of the coin, increasing and decreasing the gold, silver

or other metal content of the coin; it has issued paper money, designated its monetary value, provided that it be redeemable or irredeemable, withdrawn it from circulation, and issued new paper money.

It is obvious that the act of regulating the value of money is not obstructed by the existence of gold clause contracts. A medium of exchange can be abandoned and a new medium substituted, irrespective of the existence or amount of outstanding gold clause contracts. The substitution of a new medium may change the number of units payable on the contracts, but that is merely one *effect* of the change in medium, not an obstruction to the change.

The obligation of these bonds was to pay in *dollars* of the existing *gold standard of value*, or their equivalent. Obviously, if Congress undertook to abandon the gold standard dollar existing on May 1, 1903, and to establish a new unit of currency, also called a dollar, but of a less gold value, a different number of new dollars would be payable. But that would not change the obligation of the bonds, which would always be to pay the same gold value. There would be merely a *nominal* increase in the units of currency payable, an increase in the number of the units but not an increase in the value to be paid when measured by the standard agreed upon in the bonds.

This was pointed out by the Permanent Court in the *Case of Brazilian Loans, supra,* at page 117:

> "The devaluation of the French franc could not increase the obligation of the latter (the borrower); the gold clause merely prevents the borrower from availing itself of a possibility of discharge of the debt in depreciated currency."

What then, did Congress mean when it said that the gold clause contracts obstruct the power of Congress to regulate the value of money?

When a currency is devalued, when a new dollar is substituted for an existing standard dollar, the *nominal* value of all property except currency and simple dollar obligations for a fixed amount is affected to a greater or lesser degree. Therefore, an exercise of the power to devalue the dollar can *result* in an impairment of the *real* value of currency and of simple dollar obligations payable in a fixed amount; or, to state the same proposition in other words, an exercise of the power to devalue the dollar can result in an increase in nominal prices and a consequent reduction of the real value of currency and obligations to pay a fixed number of dollars simply.

When Congress authorized the devaluation of the dollar in 1933 its declared purpose was to increase nominal prices, which was the same thing as reducing the real value of currency and of fixed obligations to pay a fixed number of dollars, simply (Agricultural Adjustment Act, Sec. 1, 2, C. 25, 48 Stat. 31-32). The devaluation was expected to increase the nominal prices of wheat, cotton, and other farm products, and, we assume, also of silver, land, and other forms of property. And it was certain to have the automatic effect of increasing the nominal value of gold exactly in proportion to the devaluation.

Congress, proceeding on the theory that a devaluation of the dollar would increase prices correspondingly, saw that the nominal value of gold clause contracts would rise in proportion to the devaluation, thus preserving the real value of those obligations. What Congress wanted to do was to devalue the dollar for the purpose of correspondingly raising prices and reducing the real value of all debts. The gold clause in contracts prevented Congress from reducing the real value of those obligations. The gold clause did not obstruct the power of Congress to devalue the dollar; it merely limited the effect as to contracts which contained the gold clause.

By the Joint Resolution Congress undertook to regulate in advance the nominal effect of an exercise of one of its powers. Congress has no power to regulate the nominal or even the real effects of an exercise of one of its powers, either before or after. It may consider before it exercises a power what the results of its exercise of power may be, but it cannot change the situation before it acts in order to prevent results of its action which it considers undesirable. If it could do this, it could change or regulate everything, including both debts and prices.

7. Nor are gold clause contracts "inconsistent with the declared policy of Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in the payment of debts."

The policy of Congress referred to in this recital in the Resolution is the policy of having every dollar which is authorized by law and is in circulation on a parity with every other dollar that is authorized by law and is in circulation *at the same time.*

Parity in the payment of debts is established by legal tender laws. Parity in the markets is maintained by redemption, convertibility, and acceptance of the circulating money by the Government in payment of duties and imposts. But parity means equality between dollars circulating at the same time.

When Congress passed the Joint Resolution it was not maintaining all dollars coined or issued by the United States at a parity with the standard gold dollar (see Petitioners' Brief, p. 106). Indeed, if it had been doing so and had intended to continue to do so, there was no need for Congress to consider the existence of gold clause contracts, because every circulating dollar, if maintained at a parity with the existing standard gold dollar, would have been equally acceptable and the gold clause would have had no practical effect.

However, Congress planned to establish a *new* gold dollar to take the place of the standard gold dollar established by the Gold Standard Act. It expected all new dollars to be maintained on a parity with the new gold dollar, if and when established (Agricultural Adjustment Act, Sec. 43; C. 25, 48 Stat. 52, 53).

Since the establishment of the new gold dollar Congress has maintained all circulating dollars on a parity with the new gold dollar. Gold clause contracts have not obstructed it in this in any way. All the dollars now circulating have an equal power to pay gold clause contracts. The same number of new dollars is required to pay a gold bond today, no matter what kind of new dollars may be used. A law which provides for paying a bond with a less number of the new dollars than the bond itself requires simply impairs the obligation of the bond.

The policy of maintaining the equal power of every dollar in the markets and in the payment of debts does not mean that the policy of Congress is to control the "purchasing power of the dollar"; the policy involves only the relation of circulating dollars to each other. Whatever the dollar, its purchasing power varies, and must vary. Its purchasing power depends upon trade and business, upon locality, and upon the will of the persons who use it. It will have one power when trade and business are good and another power when trade and business are bad. It will have one power in one locality and a different power in another locality with respect to the same thing. It will have one power in one shop and another power in another shop in the same locality for the same thing. If Congress had authority to regulate the purchasing power of money, it could fix all prices and all wages without limit.

8. Section 1 of the Joint Resolution says that contracts which provide for payment in gold value are declared to be "against public policy."

Why against public policy? They were not against public policy when the Government in the exercise of its borrowing power organized leading men in every community and instructed them to attend meetings and sell its gold clause bonds to raise money to win the war. Will they be against public policy if needed again to meet another such situation?

They were not against public policy when states and municipalities made such contracts in their financing. The states, and municipalities under the authority of the states, have the sovereign right to borrow money and to make any contracts about its repayment their constitutions and laws authorize them to make and that they wish to make. When, in the exercise of this soverign right, they chose to agree to pay back money they borrowed according to the same standard of value as the money they received, that was their sovereign right and privilege and it could not have been against public policy.

Nor was the gold clause in contracts between private persons against public policy. Congress established the standard of value so that people might use the established standard in dealing with each other. Hence to use that standard could not be against public policy. Moreover, such contracts were the very best of policy, because they induced investors to make long-term loans. And long-term loans are indispensable in all great enterprises such as the building, maintaining and equipping of railroads, subways, waterworks, telephone and telegraph systems, and the like.

The making of agreements to pay in gold coin of the standard established by the United States or its equivalent in value could not have been against public policy when these contracts were made; nor was the existence of those contracts against public policy on June 5, 1933, when the Joint Resolution was passed. No change in conditions, no emergency, could make existing contracts, which use the standard of value provided by law as their basis, against public policy.

No conditions could ever arise which would make it public policy for a great nation to deny the binding force of its own obligations, lawfully issued under a paramount power and validly outstanding. Conditions might arise which would compel an honorable nation to admit, after every possible effort to meet its obligations, that it could not do so. But what conditions could justify an announcement by a sovereign nation that its promise to pay back the equivalent of what it had borrowed was a promise it would not keep and that it would not do what it had agreed to do?

Under our dual system of government no conditions could ever arise which would make it Federal public policy to change the contracts, impair the credit and restrict the borrowing power of the states.

Nor can conditions ever arise which will make it a matter of public policy to impair a whole class of valid private money obligations, by whomsoever owed.

9. All these inconsistencies in the Joint Resolution are due to distorting the scope of the "power to coin money, regulate the value thereof." The true scope of that power is to establish a "suitable medium of exchange" and a "sound and uniform currency," which neither requires nor permits the impairment of a particular class of contracts.

The express power given in Clause 5, Section 8, of Article I is to "coin money, regulate the value *thereof,*" that is, of coined money. Although Congress does have the power to issue paper money as well and to make it legal tender, it does not derive that authority from the coinage power (*Juilliard* v. *Greenman,* 110 U. S. 421, 448). "Regulate" means to "fix" and change from time to time. "Value" means "monetary value," not purchasing power in a particular transaction or power to discharge a particular class of debts. Thus this Court said in *Fox* v. *State of Ohio,* 5 How. 410, at page 433:

> "We think it manifest that the language of the Constitution, by its proper signification, is limited to

> the facts, or to the faculty in Congress of coining and of stamping the standard of value upon what the government creates or shall adopt, and of punishing the offense of producing a false representation of what may have been so created or adopted."

The full scope of the so-called money power was stated in *Veazie Bank* v. *Fenno,* 8 Wall. 533, in which Chief Justice CHASE said that the Congress could "satisfy the wants of the community, in respect of a circulating medium" and "secure a sound and uniform currency" (p. 549).

The power to issue paper money and to make it legal tender is primarily an incident of the borrowing power. This is clear from a reading of this Court's opinions in *Knox* v. *Lee,* 12 Wall. 457, and *Juilliard* v. *Greenman,* 110 U. S. 421. In the latter case Justice GRAY accurately referred to the coinage power as the "analogous power of coining money and regulating the value of domestic and foreign coin" (p. 448).

Congress has undoubted power to do anything reasonably adapted to providing a "sound and uniform currency." But the impairment of the real value of money contracts does not have any tendency whatever to provide such a currency.

The power to "coin money, regulate the value thereof" is a very different thing from a power to regulate money contracts. Money is a medium of exchange, a mere instrument for use in commerce. Money contracts are property created through the use of the medium. The devaluation of the dollar is authorized because Congress has control over the medium itself. One *result* of a devaluation is that it impairs all outstanding contracts made in a fixed number of dollars, simply. But that does not mean that all contracts must be made in a fixed number of dollars, simply; nor does it mean that Congress has the power to eliminate from money contracts any clause providing a standard of value. The scope of the power is over the medium of exchange, not over contracts made in the medium.

10. If the Joint Resolution is sustained, it means, and must mean, that no one, neither the Government itself, states, municipalities, nor private persons, can make a money contract according to any fixed standard of value even if established by law, and lawfully provide therein that the contract shall be performed in the same fixed standard of value in which it was made; it means, and must mean, that Congress has power at all times to impair or destroy at will all money contracts.

This is not only contrary to this Court's decisions in *Bronson* v. *Rodes*, and in the long line of gold clause cases that followed it, but it is inconsistent with the whole idea of any fixed standard at all. It is an appropriate function of government to provide a standard of value as an aid to commerce; for a standard of value is indispensable to business prosperity and to the maintenance of regular and profitable trade and commerce.

In *United States* v. *Marigold*, 9 How. 559, at page 566, this Court, in discussing certain provisions of the Act of March 3, 1825, speaking of the power and duty of Congress with respect to a standard of value, said,

> "They appertain rather to the execution of an important trust invested by the Constitution, and to the obligation to fulfill that trust on the part of the government, namely, the trust and the duty of creating and maintaining a uniform and pure metallic standard of value throughout the Union. The power of coining money and of regulating its value was delegated to Congress by the Constitution for the very purpose, as assigned by the framers of that instrument, of creating and preserving the uniformity and purity of such a standard of value. * * *"

Congress established a fixed metallic standard by the Gold Standard Act of 1900 (see above p. 9). The Railway Company wished to use this standard in its bonds and mortgage. *Knox* v. *Lee* and *Juilliard* v. *Greenman* held

that, if parties made contracts payable in dollars, simply, they would be deemed not to have relied upon the legal standard in existence when the contract was made. Therefore, the Railway Company did not make its contracts payable in money, simply; it expressly agreed to pay back the sum it borrowed measured by the same fixed standard of value established by law as the money it received.

After Congress has established a fixed standard, called it a standard, and by necessary implication told parties to rely upon it, and they have relied upon it by using this lawful fixed standard in their contracts, both in making them and in providing how they shall be performed, can Congress strike out of such contracts the provisions therein which adopt and use for the contracts the standard of value which Congress fixed? If so, the fixed lawful standard was not a standard at all.

Moreover, if the Joint Resolution is valid, it means that Congress can never establish any reliable gold or other fixed standard of value, because, whatever the standard, it is always subject to such retroactive changes as Congress may choose to make.

Thus, by asserting the power to abrogate the gold clause in contracts, Congress in effect asserts that it has no power to establish a fixed standard of value; that there is and can be no such thing as a fixed standard which parties can make the basis of their money contracts; that if Congress by law fixes a standard of value, and parties use that standard in their money contracts, Congress may by legislation change all such contracts and strike out therefrom the provisions thereof relating to the standard of value, whether the contracts were made by the Government itself, by states or municipalities, or by private persons.

Thus, obviously, the object, purpose and effect of this Joint Resolution are not to coin money or regulate the value thereof, nor to do anything which the Constitution au-

thorizes Congress to do. On the contrary, it is a plain, unqualified and direct attempt to violate the obligations of contracts which the Government itself made with authority of Congress in the exercise of its borrowing power, to encroach upon the sovereign power of the states by interfering with their power to borrow money on whatever terms they choose to make, by changing the terms of the contracts which they have made in borrowing money, by impairing their credit, and by interfering with and hindering their future financing, and to take the property of one class of persons and give it to another class without compensation and without due process of law. It is not a case where legislation passed by Congress within its constitutional powers incidentally affects private rights. It is a case where Congress undertakes directly and solely to legislate about contracts, to change their terms and impair their value. We can truly say of this, as this Court said in a similar case, *Osborn* v. *Nicholson,* 13 Wall. 654, 662 (1872),—

> "The proposition, if carried out in this case, would, in effect, take away one man's property and give it to another. And the deprivation would be 'without due process of law.' This is forbidden by the fundamental principles of the social compact, and is beyond the sphere of the legislative authority both of the States and the Nation."

V.

To provide that these bonds can be discharged upon payment of the nominal amount in any kind of dollars, whatever their gold value, is to take the property of one private person and give it to another private person.

1. The obligation of the bonds and mortgage was to pay gold value. The Joint Resolution and the decree below provide that the bonds can be discharged by payment of the nominal amount in any kind of dollars, whatever their gold value. They rewrite the contract, and make it read as if it were to pay dollars, simply.

The result is that *today,* if the Joint Resolution be valid, the bonds and mortgage can be satisfied by payment of a *new* dollar of 15 5/21 grains of gold for every *old* dollar of 25.8 grains agreed to be paid. And, if *tomorrow* the President devalues the dollar again, as he reserved his authority to do (Appendix to Petitioners' Brief, p. 148), or Congress exercises its power to devalue, the mortgage can be discharged by payment of the same number of any kind of dollars, even if their statutory and market value in gold be much less than it is today.

The mortgage was a valid mortgage. It has not been paid. No one has any interest in the property it covers except subject to the terms of the mortgage. To change those terms is to transfer property to some one else. This Court said in *Lynch* v. *United States,* decided June 4, 1933, 292 U. S. 571, 579:

> "Valid contracts are property, whether the obligor be a private individual, a municipality, a State or the United States."

Property is transferred *from* the bondholders. It is transferred *to* the Railway Company, and thus to the holders

of junior liens, the general creditors of the Railway Company, and the stockholders of the Railway Company. The United States of America and Reconstruction Finance Corporation are before the Court in this case as creditors of the Railway Company who wish to benefit from the transfer.

2. The due process clause of the Fifth Amendment prohibits the impairment of the gold clause contracts. In the *Lynch* case the Court said, page 579:

> "As Congress had the power to authorize the Bureau of War Risk Insurance to issue them, the due process clause prohibits the United States from annulling them, unless, indeed, the action taken falls within the federal police power or some other paramount power."

Is any federal power superior to the power to borrow money when the life of the nation is at stake? Is any federal power superior to the borrowing power of states and municipalities for their local purposes? Is any federal power so superior to the security of private property that it can be used directly and solely, not indirectly or incidentally, to impair the value of private property without compensation and without due process of law?

The *Lynch* case not merely condemns this Joint Resolution, but the following quotation from the Court's opinion answers some of the *ad hominem* arguments advanced by our opponents to sustain it (p. 580):

> "Punctilious fulfillment of contractual obligations is essential to the maintenance of the credit of public as well as private debtors. No doubt there was in March, 1933, great need of economy. In the administration of all government business economy had become urgent because of lessened revenues and the heavy obligations to be issued in the hope of relieving widespread distress. Congress was free to reduce gratuities deemed excessive. But Congress was with-

> out power to reduce expenditures by abrogating contractual obligations of the United States. To abrogate contracts, in the attempt to lessen government expenditure, would be not the practice of economy, but an act of repudiation. 'The United States are as much bound by their contracts as are individuals. If they repudiate their obligations, it is as much repudiation, with all the wrong and reproach that term implies, as it would be if the repudiator had been a State or a municipality or a citizen.' (*The Sinking-Fund Cases*, 99 U. S. 700, 719.)"

If Congress has no power to pass laws which violate the obligation of contracts to which the United States is a party, where in the Constitution does it get authority to pass laws the sole purpose of which is directly to violate the obligations of contracts between private individuals? The Fifth Amendment protects the integrity of every contract "whether the obligor be a private individual, a municipality, a state or the United States."

Lynch v. *United States, supra.*

Conclusion.

We have said nothing about Congress having no powers except the powers the people expressly gave it in the Constitution and the powers implied from the powers expressly granted. We have said little or nothing about the reluctance of the people, because of their jealousy for their personal liberty and their apprehensions for the security of their private property, to grant to Congress the limited powers they finally did grant, and then only upon conditions which brought about the prompt adoption of the first ten Amendments. These and other kindred facts, such as the Tenth Amendment, which are fundamental and are at the threshold of every discussion relating to constitutional power, are so familiar to this Court that we do not know

of anything we could say on any one of them that might help a decision of this case.

The security of private property is one of the chief concerns of the Constitution. No person shall be deprived of his property without due process of law, nor shall private property be taken for public use without just compensation. And yet our opponents here ask the Court to sustain the validity of a Resolution of Congress the sole object, purpose and direct effect of which are to deprive persons of their property without due process of law and to take private property for private, not public, use without any compensation. Surely this cannot be done if the Government is a government of limited powers and the language of the Constitution means what it so plainly says.

A Reply to the Brief for the United States and Reconstruction Finance Corporation, separately printed, is filed herewith.

The decree below should be reversed.

Respectfully submitted,

JAMES H. MCINTOSH,
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Attorneys for Respondents.

29 December, 1934.

FILE COPY

Nos. 471 and 472

DEC 31

In the Supreme Court of the United States

OCTOBER TERM, 1934

UNITED STATES OF AMERICA, RECONSTRUCTION FINANCE CORPORATION, ET AL.,

Petitioners,

v.

BANKERS TRUST COMPANY AND WILLIAM H. BIXBY, TRUSTEES,

Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

RESPONDENTS' REPLY TO THE JOINT BRIEF OF THE UNITED STATES AND THE RECONSTRUCTION FINANCE CORPORATION

JAMES H. MCINTOSH,
CLIFTON P. WILLIAMSON,
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29 December, 1934.

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In the Supreme Court of the United States

OCTOBER TERM, 1934

NOS. 471 AND 472

UNITED STATES OF AMERICA, RECONSTRUCTION FINANCE CORPORATION, ET AL.,

Petitioners,

v.

BANKERS TRUST COMPANY AND WILLIAM H. BIXBY, TRUSTEES,

Respondents.

RESPONDENTS' REPLY TO THE JOINT BRIEF OF THE UNITED STATES AND THE RECONSTRUCTION FINANCE CORPORATION

In replying to the Brief of the Government and the Reconstruction Finance Corporation it is proper first to remove any doubt as to the issues presented in this case. Much of the discussion in the Brief seems to us irrelevant, because it is based on erroneous conceptions of the contentions of the Respondents or because it ignores the nature of the relief sought and obtained by the Petitioners below.

1. THE MEANING OF THE GOLD CLAUSE. For obvious reasons the Petitioners seek to construe the gold clause as if it provided merely for a means of payment and not a standard or measure of value. If their contention be sound, that the parties were interested merely in providing for the payment of "coin," as if the bondholders had been coin collectors, the Joint Resolution was unnecessary and the decree below

was academic. The Congress has undoubted power to say what shall circulate as coin in the United States. On January 30, 1934, all gold coin was withdrawn from circulation by the Gold Reserve Act. If the obligation of the bonds was merely to pay coin, why was it necessary to get a decree below sustaining the Joint Resolution?

The parties must be deemed to have contracted with full knowledge of the power of Congress to withdraw from circulation gold coin of the standard of weight and fineness existing on May 1, 1903. The problem, if there be any problem, is to determine what the parties intended should be their mutual rights if gold coin of the specified weight and fineness were withdrawn from circulation. If the Court finds that it was merely intended that, in that event, the Mortgage debt could be satisfied by the payment of the nominal amount in any current dollars, the Court will have no need to consider the Joint Resolution in this or any other case. The Joint Resolution will have been unnecessary. The only question in any case will be whether at the time of judgment the specified gold coin is in circulation.

But if, as we think is quite evident, the parties were not interested in coins, but in gold value, they clearly intended that, if the standard gold coin referred to in the contract should be withdrawn from circulation, the equivalent gold value should be paid. The effect of the Joint Resolution was in substance to provide that, if the standard gold coin should be withdrawn from circulation, the equivalent gold value need not be paid, and that any kind of new dollars would satisfy the mortgage debt if tendered in an amount equal to the numerical amount of the standard gold dollars specified in the bonds. It is only because the Joint Resolution had this effect, and because the Court below held that the Joint Resolution was constitutional, that it is necessary to have any argument before this Court.

This preliminary restatement of the Respondents' position is required because a very large part of what is said in the Brief of the Petitioners is relevant only if the gold clause be construed as providing merely for the payment of coin and not as providing for the repayment of gold value.

2. The Relief Obtained by the Petitioners Below. Much of the discussion in the Petitioners' Brief, and all of the extended analysis of the various Proclamations and Orders issued between March 4, 1933 and the enactment of the Gold Reserve Act on January 30, 1934, have no real bearing on the issues presented here for a further reason,—

Throughout the Petitioners' Brief the case is discussed as if a bondholder had brought a suit at law on a bond which had matured on May 1, 1933. That is not this case at all. The Respondents are Trustees of a mortgage on certain property, title to which is now vested in the Trustees of the Debtor. The Respondents' intervening petition does not even allege that the Debtor ever assumed the mortgage or agreed to pay the bonds (R. 52-59). The decree was not entered on any motion of the Respondents for a determination of the amount of their lien. It was entered on a motion of the Petitioners for a decree to the effect that the Respondents' lien could be discharged upon payment of the numerical amount specified in the bonds in any legal tender money (R. 76, 80-81, 96, 102, 109, 131). The prayer in the Respondents' intervening petition with respect to the ultimate determination of their lien was qualified (R. 58), and no motion had been made by the Respondents for any such determination. No order had been entered which required the filing of the claims of the bondholders (R. 11-15). No plan was before the Court. No tender of the amount of the mortgage debt had been made.

The effect of the decree therefore was simply to dispose of the issue of law as to the validity of the gold clause and

the constitutionality of the Joint Resolution as applied to the mortgage of which the Respondents are Trustees (R. 131-134). Unless the decree be reversed, the mortgage can be satisfied by the payment of 34,548,000 of any kind of dollars which may be current at any time, whether they have the gold value contracted for by the parties when the mortgage was executed, or only an infinitesimal fraction thereof.

It necessarily follows that the fact that the mortgage matured on May 1, 1933, is of no significance whatever. After its maturity the mortgage remained a valid and subsisting lien according to its terms. On June 5, 1933, the Congress undertook to change those terms. The only question is whether Congress had the power to do this. If it had, the change was effected and is permanent. Otherwise, the terms of the mortgage are just what the parties intended they should be.

In replying to the Brief of the Government and the Reconstruction Finance Corporation we shall try to follow as nearly as practicable the order of the Brief:

"QUESTION PRESENTED" (pp. 2-3)

This case does not involve "any contractual provision which either rejects * * * legal tender or accepts it at a measured discount" (p. 3). There is no question here of a refusal to accept legal tender at its face value. The question is whether the mortgage obligation to pay gold value has been validly impaired by the Joint Resolution. The Respondents will accept legal tender if the real amount of the mortgage debt be tendered.

"STATEMENT" (pp. 3-6)

In view of what has been said above, and of the statement contained in the beginning of this Brief, comment on the statement contained in the Petitioners' Brief seems unnecessary, except to point out that the Assignments of Errors which set forth the true equivalent in current dollars of "gold

coin of the United States of the standard of weight and fineness on May 1, 1903," speak as of the time of the decree and of the Assignments (R. 136, 252-253). The Respondents' position is that the principal amount due on the mortgage is the same as it always was, measured by gold value, and that, if there be further changes in the current dollars, the equivalent in current dollars will necessarily change accordingly, unless and until the Respondents pray for a decree fixing the amount in current dollars.

"SUMMARY OF ARGUMENT" (pp. 6-10)

As the summary merely outlines the argument which follows, we shall limit ourselves to discussing the argument itself.

"I"

"Public Resolution No. 10, approved June 5, 1933 is constitutional and controlling in the case at bar" (pp. 10-96)

"1. Introductory" (pp. 10-13)

We agree that a law enacted by Congress is presumed to be constitutional unless the contrary appears with reasonable clarity. We do not, however, agree that there must be "a factual foundation of record for overthrowing it," or that "the burden is upon those attacking the law to demonstrate its unconstitutionality by clear and convincing proof" (Petitioners' Brief, p. 11). The petitioners cite no authority for this proposition. *Lynch* v. *U. S.*, 292 U. S. 571, is a recent instance in which the Court has found that there was no relation between an Act of Congress and the power purported to be exercised. In the *Lynch* case the Court did not require factual evidence that the repudiation of a contract did not tend to establish the credit of the United States. We do not think that in this case there was any burden on the Respondents to offer testimony.

At page 12 it is asserted that the judgment of Congress in choosing means to execute its powers "will not be overturned unless clearly arbitrary or capricious." The cases cited hardly support this proposition. We think the true test is that the means must be "reasonably adapted" to a legitimate end within the scope of a Congressional power (*Ling Su Fan* v. *U. S.*, 218 U. S. 302, 311). The Fifth Amendment imposes the *further* requirement that the means be not "unreasonable, arbitrary or capricious" (*Nebbia* v. *New York*, 291 U. S. 502, 525).

"The Gold Clause" (pp. 13-18)

The construction of the gold clause, briefly mentioned under this heading, is discussed in our Main Brief at pages 19-33 and below at pages 33-34.

We think that the words "gold coin clause" and "gold value clause" usually designate *different interpretations* of the same clause rather than clauses differently worded. The Petitioners say in their Brief that the gold clause involved here is "typical" (p. 17) and "the most common type" (pp. 13-14). It is substantially identical with that contained in the Government bonds. Congress was obviously legislating about the typical clause, which it evidently understood to be a gold value clause (see Senator Fletcher's statement, quoted at pp. 60-61 of the Petitioners' Brief). Indeed, unless the typical gold clause was a gold value clause, there was no reason for Congress to enact the Joint Resolution. If there be any gold clauses in existence which in so many words call for "gold coin or an amount of money measured thereby" (Petitioners' Brief, p. 14), they are very rare indeed; the Petitioners do not suggest that of all the vast sums mentioned in their Brief as much as $1,000 is due on any such clause. Unless the typical clause be a gold value clause, Congress could have simply withdrawn the standard gold coin from circulation, as it did later under the Gold

Reserve Act, and, whatever the moral aspects of such a withdrawal, there would have been no constitutional question presented.

"2. There was a reasonable basis for Congressional determination that the gold clause is contrary to public policy, inconsistent with our present monetary system and an obstruction to the exercise by Congress of its monetary and other powers" (pp. 18-68)

As the preliminary statement under the above heading at pages 18-19 is in general language, we will reply only to the contentions advanced in detail at pages 19-68.

"A. *Justification of the gold clause was removed when the dual monetary system was ended by the parity provisions*" (pp. 19-24)

"(I) THE DUAL MONETARY SYSTEM" (pp. 19-20)

The Petitioners contend that at one time there was something which they call "the dual monetary system," and that while there was such a system it was appropriate to use the gold clause. And, they say, "with the adoption of the principle that all coins and currencies of the United States should be equal, the gold clause lost the significance and the justification which it earlier possessed" (p. 26). To these propositions they devote from pages 19 to 26 of their Brief.

The theory that a gold clause is inappropriate at a time when all forms of dollars are maintained on a parity is based on a misconception of the purpose of the clause. Since its purpose is to determine the rights of the parties in the event that there should be a new standard before payment, or if all forms of circulating money should not be maintained on a parity at the time of payment, the fact that at the time of the issuance of a gold clause obligation all forms of money are maintained on a parity with the existing standard is immaterial. The purpose of the clause is to guard against the risks of the future.

The history of the use of the gold clause completely disposes of the Petitioners' contentions. They correctly cite the Gold Standard Act of 1900 as establishing a standard gold dollar and expressly directing that all forms of money be maintained on a parity with the standard (p. 25). If there ever had been a "dual monetary system," Petitioners agree that it was no longer in operation after 1900 (p. 25). Yet, the same Gold Standard Act provided for the issuance of gold clause obligations by the Goverment (C. 41, § 2, 31 Stat. 45, Title 31, U. S. Code Ann Sec. 408). And on February 4, 1910 Congress enacted a law requiring that *all* Government bonds contain such a clause (C. 25, 36 Stat. 192; Title 31 U. S. Code Ann., Sec. 768). The Congress of 1933 may have regretted that the previous Congresses took these steps to assure investors in Government bonds that they would be repaid money of the same standard that they lent the Government, but the devaluation of the dollar authorized by the Congress of 1933 *proved* "the significance and the justification" (p. 26) of the use of the gold clause.

While it thus appears that the contentions advanced at pages 19-26 are demonstrably unsound, some of the incidental statements require brief comment.

It is not the historical fact that prior to 1862 the circulation of state bank notes made the use of the gold clause particularly appropriate. The state bank notes were not legal tender, and the states had been expressly forbidden by the Constitution from making them such (Article 1, Section 10, Clause 1). Prior to 1862 the only legal tender consisted of coins struck by the United States, and creditors did not need to protect themselves from being forced to accept state bank notes.

Gold clauses had an earlier origin. Indeed, as already shown in our main Brief at pages 21-22, a clause remarkably like the one involved in this case was in common use even before the Constitution was adopted. In Hamilton's

Plan for the Constitution submitted to the Convention in 1787 he suggested that one of the qualifications for Presidential electors be "a clear personal estate of the value of one thousand Spanish milled dollars of the present Standard" (Farrand, The Records of the Federal Convention, Vol. III, p. 622).

"(II) BRONSON *v.* RODES" (pp. 21-24)

There is no doubt that at the time *Bronson* v. *Rodes,* 7 Wall. 229, was decided there were two kinds of lawful money circulating, and that the Greenbacks fluctuated in terms of the coin. But the mortgage involved in the case was executed in 1851, long before the Greenbacks were issued. The only significance of the fact that gold coin was lawful money when the judgment was entered is that the Court was able to enter judgment payable in gold coin. It is true that the situation today is not precisely analogous, in that gold coin no longer circulates, and a judgment cannot be entered today in gold coin. But bondholders and mortgagees can be accorded the relief granted in *Gregory* v. *Morris,* 96 U. S. 619.

The current dollar is by statute, if maintained at a parity, equivalent to a gold coin of a lesser gold content than the old gold dollar. It is virtually conceded at page 115 of the Petitioners' Brief that if the new gold dollar were coined, 1,000 new gold dollars would not discharge a bond which called for 1,000 of the old gold dollars (see *infra,* p. 33). How can it possibly be said that the debt can be discharged with 1,000 new dollars *in paper,* if it concededly could not be discharged with 1,000 new gold dollars *in coin?*

"(III) THE PARITY PROVISIONS" (pp. 24-28)

All the discussion under this subheading uses the word "parity" in an erroneous sense. Parity of money means simply that all forms of money *circulating at the same time*

are maintained at a parity according to their respective denominations. It does not mean that a circulating money is to be maintained on a parity with money that has ceased to exist and a standard which has been abandoned.

Parity with the legal standard, that prescribed by the Gold Standard Act, was not in fact maintained after April 19, 1933, when it was announced that exports of gold would not be permitted (see Petitioners' Brief, p. 106, and Appendix to Petitioners' Brief, pp. 18-21) and *was not* being maintained when the Joint Resolution was passed (id.). That announcement was taken to mean that the dollar would probably be cut, and as a result the circulating money, exclusive of gold coin and gold certificates (the legal status of which was and still is in doubt), ceased to have the value of the standard gold dollar established by the Gold Standard Act, as was clearly shown by the quotations of gold standard foreign currencies (see Commercial & Financial Chronicle, April 22, 1933, vol. 136, pp. 2653-2656, 2751). The disparity between the dollars generally used and the standard gold dollar was subsequently increased through the purchase of gold by the Treasury and the Reconstruction Finance Corporation at increasing prices, measured in terms of the other dollars (see below, pp. 31-32).

The Agricultural Adjustment Act did have the effect of making all forms of currency legal tender (Act of May 12, 1933, C. 25, Sec. 43, 48 Stat. 52). But it no more established parity between other dollars and the standard gold dollar, which was then still established by statute, than did the Legal Tender Act of 1862 establish parity between Greenbacks and the gold coin of that time. On the contrary, the disparity in market value between the money generally circulating and the standard gold dollar continually increased, and was reflected in the steadily decreasing value of the circulating dollars in terms of all foreign gold standard currencies and the continuously increasing price paid by the Treasury and the Reconstruction Finance Corporation

for gold. Much, if not all, of the disparity was, of course, forced (see below, pp. 31-32).

On page 26 of the Petitioners' Brief it is also stated that

> "With the adoption of the principle that all coins and currencies of the United States should be equal, the gold clause lost the significance and the justification which it had earlier possessed."

So long as the standard established by the Gold Standard Act was continued, all forms of money were supposed to be maintained on a parity with the dollar of *that* standard. The Thomas Amendment of the Agricultural Adjustment Act (Act of May 12, 1933, C. 25, Sec. 43, 48 Stat. 52) authorized the President to establish a *new* dollar of a *new* variable standard and directed that, when the President did so, the Secretary of the Treasury should maintain all money on a parity with the *new* variable standard. But the *new* dollar, if established, was to take the place of the old standard, and Congress could not expect to achieve the impossible feat of maintaining all forms of money on a parity with two unequal standards at the same time.

Parity with the *old* standard was maintained until April 20, 1933 (see below, pp. 31-33). Parity with the *new* standard has been maintained since the new dollar was established by the President at 3:10 P. M. on January 31, 1934 (Appendix to Petitioners' Brief, pp. 144-148). It is a variable standard because the President has expressly reserved the power to change it (p. 148).

The Petitioners' statement, therefore, seems to be erroneous in three respects:

First, the principle that "all coins and currencies of the United States should be equal" had not been "adopted" by the Agricultural Adjustment Act; it had been adopted not later than 1900 in the Gold Standard Act, and had been abandoned on April 20, 1934, when the export of gold was

prohibited and that fact coupled with the fear of a reduction in the gold content of the dollar, brought about a disparity between the standard gold dollar and the money generally circulating;

Second, the actual disparity which existed after April 20, 1934, first gave a practical effect to the gold clause; the possibility that such a disparity might develop was one of the contingencies which gave the clause a practical importance;

Third, the Agricultural Adjustment Act also authorized the President to reduce the gold content of the dollar (Act of May 12, 1933, C. 25, Sec. 43, 48 Stat. 52-53), or, in other words, to establish a new dollar and to abandon the standard established by the Gold Standard Act; the gold clause was intended to provide against the action which was forecast by the Act.

Thus in all the discussion of parity in the Petitioner's Brief we find the identical fallacies which are contained in the recitals of the Joint Resolution (see our Main Brief, pp. 52-53). Congress said that the gold clause contracts were inconsistent with the policy of maintaining parity. But the demonstrable fact is that *Congress was not maintaining parity with the standard established by law when the Joint Resolution was enacted, and, if Congress had intended to maintain parity with that standard, the gold clause would have had no practical effect.* It was only because it was not maintaining parity with the established standard, and had authorized a new standard, that it had any occasion to take notice of the existence of the gold clause contracts.

In the light of these facts the Treasury Memorandum quoted at pages 26-28 is interesting. So far as it concerns us here there is only one important statement:

> "One of the purposes of the resolution is to remove any doubt and to avoid confusion, so that debtors and creditors may have a clear definition of their legal position."

In other words, the purpose of the Joint Resolution was to "determine" the rights of debtors and creditors in the sense of having Congress fix these rights. The function of determining the existing rights of creditors was for the courts. Congress had no function in the matter, unless Congress had the power to change their rights. Whether Congress had such power is, of course, the question in the case.

"B. *The gold clause is an obstruction to the exercise of the powers of Congress, as shown by its bearing upon recent legislation designed to cope with the monetary and financial crisis*" (pp. 28-98)

"(I) THE MONETARY AND FINANCIAL CRISIS" (pp. 28-41)

At pages 28-41 there is a resume purporting to set forth "The Monetary and Financial Crisis." It would serve no useful purpose to undertake here an extended discussion of the economic aspects of the situation on June 5, 1933. But, lest it be thought that we accept the Government's interpretation of the situation which existed in 1933, in so far as it relates to the question presented here, it is proper to say that well known economists do not appear to draw the inferences which the Petitioners wish the Court to draw. We suggest that

First, the question whether a gold bullion standard or a gold coin standard is desirable is irrelevant in a discussion of a gold *value* obligation;

Second, while the "collapse of the price level" was very severe, it does not appear that it brought prices below the level of 1903, when these bonds were issued; there is no reason why the 1926 "price level" should be taken as normal; nor does it appear that the decline was so much more severe than the declines which took place in the secondary depressions after the War of 1812 and the Civil War as to make it desirable to use remedies radically different from those which served then to restore normal conditions and the worth of which was established by experience;

Third, while the debt burden was doubtless heavy, there had been much liquidation by normal and constitutional processes prior to June 5, 1933, and it does not appear that such an arbitrary short-cut impairment of contracts would have been desirable from any point of view even if the Federal Government had been a government of unlimited powers;

Fourth, the crisis of February and March, 1933, was preeminently a banking crisis, not a monetary or fiscal crisis involving the Government, as the relative amounts of currency and gold withdrawn show; the gold reserves were enormous, for even after the withdrawals of gold about which the Petitioners write so much, the Federal Reserve Banks had $2,952,000,000 in monetary gold stocks at the end of February, 1933, which was more than they had in August, 1929, at the high point of the boom (Federal Reserve Bulletin, April, 1933, p. 260; figures for March 4th are not given), and on March 4th, according to the Petitioners' figures, the gold stocks in the Federal Reserve Banks, and the Treasury totalled $3,616,000,000 (Petitioners' Brief, p. 53); the trade position of the country was impregnable, as contrasted with that of England in 1931.

The disproportion between gold stocks and gold clause obligations (referred to in the Petitioners' Brief, pp. 41, 53) is no more significant than the present disproportion between currency outstanding and all debts. As one writer has said, even if coin were required to meet them it would be no more necessary to have gold to meet all gold clause obligations at one time than it is to build an exit from an office building so large that all the people in the building can go out at exactly the same second.

The Government's argument comes to this:

If the Administration agrees on certain economic theories and on the remedies to be used in treating our financial ills and presents them to the Congress and the Congress approves them, constitutional limitations on the powers of the Congress no longer exist.

In other words, if the Congress determines on a course of action which it conceives might be beneficial generally or to a certain group (in this case the debtors) except for the existence of previously incurred obligations, all that Congress need do is to declare that such obligations constitute an embarrassment—obstruct its power—and they may be removed.

"(II) LEGISLATION DESIGNED TO COPE WITH THE MONETARY AND FINANCIAL CRISIS" (pp. 41-44)

Under this heading, in four pages, the Petitioners give a brief and significantly incomplete summary of the legislation enacted by Congress to meet the "monetary and Financial Crisis." The most significant steps taken are not mentioned in the Petitioners' Brief. They consisted of the intentional depreciation of the dollar through the purchase of gold at more than market prices by the Treasury and the Reconstruction Finance Corporation (see below, pp. 31-32).

But this omission from the Petitioners' statement is not the most significant thing about their summary of what was done. *The outstanding fact is that the Petitioners make no effort whatever to show that the fiscal legislation was in any way adapted to meet the crisis.* Of course, it is clear that if there be a temporary run on gold, payments of gold may have to be stopped. But why dollar devaluation and the other fiscal legislation of "a permanent nature" (p. 41) was necessary or desirable does not appear.

Not an authority is quoted to show that deliberate dollar devaluation was desirable in the United States because other countries, less strong financially, had been forced to devalue their currencies. It does not appear that any convincing testimony was ever given before Congress on the subject or that Congress made any findings. As to the advisability of adopting a gold bullion standard, which has nothing to do with the case, the Petitioners later cite a mass of authorities (p. 55). To explain devaluation they cite none.

Furthermore, the devaluation was completed almost a year ago, but the only result attributed by the Petitioners in their Brief to the fiscal policy is a treaty with Cuba (p. 44). And, after advancing the "collapse of the price level" and the need for re-establishing it at the 1926 level as a reason for dollar devaluation (1926 being the year the Department of Labor happened to use as an index in computing variations), Petitioners say elsewhere in their Brief that the price level was not affected by the devaluation. For they contend that if the bondholders had been paid on May 1, 1933, they could have bought "no more food, no more raiment, no more property" than they can buy now with the same number of devalued dollars (pp. 135-136). Thus they base one of their principal arguments on the ground that the devaluation did not affect the price level.

In the absence of other evidence of the relation between the monetary policy and the crisis, we may look to an enactment of Congress and a statement of one of its authors.

What is the significance of the legislation? The Agricultural Adjustment Act of May 12, 1933, stated that its purpose was to raise prices of farm commodities (Act of May 12, 1933, Secs. 1, 2; C. 25, 48 Stat. 31-32). The author of the Thomas Amendment, Section 43, stated the purpose of that amendment to be (Congressional Record, p. 2229, italics ours):

> "Mr. President, the amendment, in my judgment is the most important proposition that has ever come before the American Congress. It is the most important proposition that has ever come before any parliamentary body of any nation of the world. Saving the single issue of the World War, there has been no issue joined in 6,000 years of recorded history as important as this issue pending here today.
>
> "Mr. President, it will be my task to show that if the amendment shall prevail it has potentialities as follows: It may transfer from one class to another class in these United States value to the extent of almost $200,000,000,000. This value will be transferred, first, from those who own the bank deposits.

Secondly, this value will be transferred from those who own bonds and fixed investments.

"I want to make that statement clear. No issue in 6,000 years save the World War begins to compare with the possibilities embraced in the power conferred by this amendment. *Two hundred billion dollars now of wealth and buying power rests in the hands of those who own the bank deposits and fixed investments, bonds, and mortgages. That $200,000,000,000 these owners did not earn, they did not buy it, but they have it,* and because they have it the masses of the people of this Republic are on the verge of starvation —17,000,000 on charity, in the bread lines.

"If the the amendment carries and the powers are exercised in a reasonable degree, it must transfer that $200,000,000,000 in the hands of persons who now have it, who did not buy it, who did not earn it, who do not deserve it, who must not retain it, back to the other side—the debtor class of the Republic, the people who owe the mass debts of the Nation."

"(III) EFFECT UNDER RECENT LEGISLATION IF GOLD CLAUSE ENFORCEABLE" (pp. 44-45)

The existence of the gold clause contracts may have been one of the many factors Congress should have considered before it embarked upon its novel monetary program. But the abandonment of a fixed standard of value and the substitution of a variable unit of currency or irredeemable paper money is itself a step of supreme importance and is sure to have far-reaching effects. The effects to be anticipated are a proper subject for Congressional consideration.

But it does not follow that Congress can lay the stage for dollar manipulation by attempting to counteract the anticipated effects in advance by means of the "regulation" of public and private contracts, private property, and private relationships. All prices and all wages are affected in greater or lesser degrees by a dollar devaluation, and if the effects can be regulated Congress has simply unlimited power.

And, unless the purpose of the devaluation was to impair the real value of the gold clause contracts, there was no reason for the Joint Resolution. Gold clause contracts would be affected only *nominally,* not really.

As the Permanent Court said in *Case of Brazilian Loans,* at page 117 (see our Main Brief, pp. 24-29, 50):

> "In this connection, it should be observed that in the present case there was no reason for the borrowers not to offer payment in gold; for such payment, while constituting a security for the lender, involved no risk for the borrower. The devalorization of the French franc could not in fact increase the obligations of the latter; the gold clause merely prevents the borrower from availing itself of a possibility of a discharge of the debt in depreciated currency."

This subject is referred to again below (p. 19 and pages there cited).

"(I) THE GOLD CLAUSE—INCOMPATABILITY WITH THE PARITY AND LEGAL-TENDER PROVISION" (pp. 45-48)

The argument under this heading is unsound, as already pointed out above at pages 9-12 (see also our Main Brief, pp. 52-53).

The statement of Justice BRADLEY quoted at pages 45-46 was the expression of a single Justice, in whose opinion no other Justice concurred. All he said was that the Court was not deciding a point which was not before it. So far as his additional observation is concerned, it is sufficient to say that he was one of the dissenting Justices in *Trebilcock* v. *Wilson,* 12 Wall. 687.

It is not true, in any real sense that, as stated at page 46:

> "Every tendency toward fluctuation in the relative value of coin and currency is intensified by the special demand for gold coin, created by the existence of gold-clause obligations."

If the current money is maintained at a parity with gold, and people are satisfied that it will continue to be, no one needs gold, whether he owes gold coin obligations or not, for checks and paper money will be accepted at a parity and are far more easy to handle. If, however, people think that paper money will depreciate in terms of gold, they want gold, whether they owe gold clause obligations or not. If people think that paper money will appreciate in terms of gold, as it did for the most part from 1865 to 1879, they want paper money, whether they owe gold clause obligations or not. Since gold clause obligations are gold value obligations, and are practically never met by actual delivery of coin, they occasion no special demand for gold coin.

It does not appear that the Government was unable to meet all its gold value obligations in due course. Perhaps a temporary suspension of gold payments was desirable, despite the enormous gold reserves, but that is an entirely different thing. Payments of specie were suspended many times in our history prior to 1933, but never did the Government fail to meet its obligations after any previous suspension.

"(II) THE GOLD CLAUSE—AN OBSTRUCTION TO THE POWERS OF CONGRESS TO REGULATE THE VALUE OF MONEY" (pp. 48-53)

The argument under this heading seems to be principally a restatement of arguments which we have already answered (see our Main Brief, pp. 49-52; also *ante,* pp. 17-18, and *infra,* pp. 25, 27, 40-42).

It seems unnecessary to point out again that the increase in obligations through dollar devaluation is *nominal,* not real. Throughout the Petitioners' Brief the word "dollar" and the dollar sign are used indiscriminately to designate the *old* and the *new* dollar, two different things.

Congress planned to establish a *new* dollar. Its theory, we assume, was that prices and values in the *new* dollar would be nominally greater than in the *old* and that the change in prices would correspond to the devaluation. If

that was to happen, there was no reason why the nominal amount of a gold value debt should not be increased proportionately, unless Congress intended to impair the real value of gold value obligations.

If the monetary experiment had actually resulted as expected, it would be quite evident to everyone that a man who lent 1,000 *old* dollars on a gold clause bond in 1903 was losing a great deal today if paid only 1,000 *new* dollars. The fact that the monetary experiment did not produce exactly the results anticipated seems to us a criticism of the policy, not a criticism of the gold clause bonds. *And it cannot be said that the gold clause bonds were an "obstruction" to a policy of Congress, if the theory that there was an obstruction is entirely dependent on the assumption that Congress knew that the policy would not work.*

The facts seem clear. Congress intended to devalue the dollar in order to change the "price level"—that is, to have all prices and nominal values stated in higher nominal figures in the *new* dollar. By passing the Joint Resolution it showed that it did not want gold clause obligations to undergo a like *nominal* change. The only possible conclusion is that Congress wished to impair the real value of gold clause obligations—not only real value in gold, but worth in terms of "food * * * raiment * * * property, real or personal" (Petitioners' Brief, p. 136).

The fact that the "price level" has not changed *yet* in proportion to the devaluation is of no significance. No one knows if or when it will. Nor does anyone know whether there will be further devaluations. The Joint Resolution, if valid, removes all protection which the holders of gold clause bonds have against depreciation, while owners of most kinds of other property remain protected.

The discussion at page 52 of what a bondholder could have purchased from 1921 to 1929 is irrelevant on any theory. The bonds were sold in 1903. They matured in 1933. Even if the changes in the purchasing power of the dollar had had anything to do with the rights of the parties,

and they did not, why should a period of high prices from 1921 to 1929 have any bearing?

It is true in a certain sense that the gold clause is "an agreement of the contracting parties conditioned, in effect, upon the exercise by Congress of its power to regulate the value of money" (Petitioners' Brief, p. 52). That is simply another way of saying that it is a guarantee against discharge of the obligation by payment of the nominal amount in depreciated money. We do not know of any principle which makes a contract illegal because the rights of the parties under it may be affected if Congress exercises a lawful power. Every contract to pay a market price in the future would have the same effect as a gold value contract if a dollar devaluation produced as automatic an effect on prices as was apparently supposed.

"(III) THE GOLD CLAUSE—INCOMPATABILITY WITH LEGISLATION TO PROTECT THE CURRENCY RESERVES AND TO PROVIDE FOR MORE EFFECTIVE USE OF GOLD" (pp. 53-58)

As the Petitioners virtually admit at page 53, every word under this heading is inapplicable unless the gold clause is construed as an obligation to pay gold coin merely, and not as an obligation to pay gold value. Therefore, for the reasons given above at pages 1-3, it is unnecessary to discuss the arguments made.

"(IV) THE GOLD CLAUSE—AN OBSTRUCTION TO THE POWER OF THE CONGRESS TO BORROW MONEY" (pp. 58-62)

The power of Congress is to "borrow money *on the credit of the United States.*" This Court said on June 4, 1933, in *Lynch* v. *United States,* 292 U. S. 571, 580:

> "Punctillious fulfillment of contractual obligations is essential to the maintenance of the credit of public as well as private debtors."

The philosophy disclosed in the Brief is that the way for a public debtor to establish its credit is to impair its own outstanding obligations and all other obligations which

would compete with new issues in the money markets. The impairment must, of course, be so gauged as to bring all outstanding obligations at least down to the level of those to be issued. This philosophy would justify the impairment of all outstanding obligations at any time, as to principal amount, interest rates, maturity dates, security or any other provisions.

Of course, performance of contracts by payment of amounts of money measured by an established and agreed standard of value does not require Congress to establish "a dual monetary system" or "pass two different kinds of currency" (Petitioners' Brief, pp. 60-61).

The real relation of the Joint Resolution "to the power to borrow money on the credit of the United States" is set forth in our Main Brief at pages 46-47.

"(V) THE GOLD CLAUSE—AN INTERFERENCE WITH THE POWERS OF THE FEDERAL GOVERNMENT OVER INTERNATIONAL RELATIONS, FOREIGN EXCHANGE TRANSACTIONS, AND FOREIGN COMMERCE" (pp. 62-67)

The whole argument under this heading can be summed up in a single sentence: It is, that in order to promote foreign commerce more effectively Congress should have the power to impair private contracts.

Possibly an unlimited sovereign *might* control foreign commerce and negotiate more favorably with foreign nations if its people were regimented and every contract subject to regulations. We do not have that kind of a government, but our kind has countervailing advantages of greater importance. On no theory can the power to regulate foreign commerce embrace the authority to impair domestic money contracts.

"(VI) THE GOLD CLAUSE IN OTHER COUNTRIES" (p. 68)

The prohibition or abrogation of gold clause contracts in European countries has no significance here. The economic and financial situation in every one was radically different from ours. England took no such action.

"3. The Resolution is Within the Power of Congress" (pp. 68-87)

The preliminary statement under this heading quotes some general language from *Juilliard* v. *Greenman,* 110 U. S. 421. But in that case Justice GRAY specifically held that the power to issue paper money and make it legal tender was derived from the power to "borrow money," not from the coinage power (pp. 447-448).

"A. *Power over the coinage and currency*" (pp. 69-75)

It seems to be conceded that the "power to coin money, regulate the value thereof" embraces primarily the power to stamp coin and designate its monetary value.

In *Hepburn* v. *Griswold,* 8 Wall. 603, Chief Justice CHASE explained the meaning of the words "regulate the value thereof" (p. 616):

> "* * * This power of regulation is a power to determine the weight, purity, form, impression, and denomination of the several coins, and their relation to each other, and the relations of foreign coins to the monetary unit of the United States."

While *Hepburn* v. *Griswold* was overruled in *Knox* v. *Lee,* 12 Wall, 457, Chief Justice CHASE's explanation of the meaning of "regulate" was not challenged, nor has it ever been.

There is no dispute that Congress can issue irredeemable paper money and make it legal tender, even in time of peace. But this power is derived from the power "to borrow money on the credit of the United States," as a careful reading of *Knox* v. *Lee,* 12 Wall. 457, and *Juilliard* v. *Greenman,* 110 U. S. 421, will show. The statement at page 72 of the Petitioners' Brief on this subject is hardly accurate.

Congress has all the powers necessary to provide a "suitable medium of exchange" and establish "a sound and uniform currency" (*Veazie Bank* v. *Fenno,* 8 Wall. 533, 549).

But the fact that Congress can subject a *simple dollar* creditor "to a corresponding loss" by establishing a new dollar or by issuing irredeemable paper money begs the whole

question in this case. Such a creditor's contract calls merely for a dollar, not for gold value or any other agreed value (see our Main Brief, pp. 42-43). There is nothing in any decision of this Court which suggests that Congress has the power to eliminate retroactively an agreed measure of a money contract, whether it be the market price, an appraised value, or the market value of wheat or some other commodity, or a fixed standard established by law.

Justice STRONG's statements in *Knox* v. *Lee*, 12 Wall. 457, 551-552, which are quoted at page 71 of the Petitioners' Brief and relate to the six percent reduction of the dollar in 1834, have no bearing and are not a strictly correct statement of historical fact. They have no bearing, because he was speaking of a simple dollar debt and particularly stressed that fact twice (pp. 548, 549). And his statement was not strictly correct, because the adjustment made in 1834 was to reduce the gold dollar to the market value of the silver dollar. "The debts then became solvable with six percent less gold than was required to pay them before," but through the operation of Gresham's Law gold had been practically driven from circulation and the debts would have been paid in silver, not gold, and the reduction did not deprive the creditor even of an "expectancy."

Congressional Debates, June 21, 1934, Vol. X, Part IV, pages 4643-4674;
Dewey's "Financial History of the United States," pages 210-212.

The significant fact is that from 1792 to 1934 the gold dollar remained substantially the same (*Bronson* v. *Rodes*, 7 Wall. 229, 247-249). The recent devaluation of the dollar and abrogation of gold clause contracts cannot be compared to the six per cent adjustment made in 1834 to bring the legal ratio of gold and silver in line with the market value of the metals, or to the discontinuance of the free coinage of silver in 1873, which was due to the fact that the high market

value of silver at that time had driven the silver dollar out of circulation.

Dewey's "Financial History of the United States,"
pages 403-407.

It is true that the issue of irredeemable legal tender paper money does subject creditors who hold obligations payable in a fixed number of dollars, simply, to a loss. It is also true that it is an indirect method of taxation. But these two effects of the issue of such money are objections to it, not arguments in its favor. The power to issue legal tender has been upheld, notwithstanding these objections, as an incident of the power "to borrow money on the credit of the United States." But it was upheld on the theory that a contract to pay dollars, simply, was a contract to pay whatever should be dollars when payment was made (*Knox* v. *Lee,* 12 Wall. 457, pp. 548-549; *Juilliard* v. *Greenman,* 110 U. S. 421, p. 449). That is obviously not true of a contract to pay a debt measured by an agreed standard of value.

If Congress can eliminate a lawful standard or measure of value from a contract, the reason must be that the power to "coin money, regulate the value thereof" was intended to be used as an instrument to impair the real value of contracts and should be perfected as such an instrument. But the fact that the issue of irredeemable legal paper money under the borrowing power or the devaluation of the dollar under the coinage power may have the unfortunate indirect effect of impairing the real value of one kind of contracts does not authorize Congress to alter the terms of a different kind of contracts so that they will be impaired too.

At page 75 of the Petitioners' Brief they state their real theory: *that Congress may counteract the effect of its own acts.* In so stating the proposition they overlook the fact that devaluation has no *real* effect on a gold clause contract, since the gold value payable is not changed. But not one of

the instances they cite supports the proposition even as they assert it.

In "the statutes of 1834 and 1853" Congress merely regulated the value of money, and did not "legislate to counteract the effect of market conditions upon money." Congress adjusted the gold value to conform to the market values of gold and silver, and did not attempt to adjust the market to a preconceived theory of what the ratio should be.

In taxing state bank notes Congress did not legislate "to overcome the policy of States" in the sense conveyed in the Brief. It legislated to exclude a competing form of money (*Veazie Bank* v. *Fenno,* 8 Wall. 533).

When Congress prohibited the export of silver coin from the Philippines (*Ling Su Fan* v. *U. S.,* 218 U. S. 302) Congress did not legislate to "counteract the activities of private parties" in the sense suggested by the Petitioners. It prohibited the export of coin on the theory that a sovereign has the same right to bar the export of coin as it has to prohibit its defacement, and that the prohibition was necessary to maintain a suitable medium of exchange.

In each and every instance the legislation was *monetary.* It looked directly to and acted solely on coin or other currency. The Joint Resolution looks directly to and operates solely on contracts. It starts with the words, "every provision."

"B. *Power to borrow money*" (pp. 75-77)

Nothing more need be said on this subject. Borrowing requires credit. Repudiation destroys credit. An act of repudiation cannot be authorized under a power to borrow.

Lynch v. *U. S.,* 292 U. S. 571, 580.

"C. *Power over foreign commerce and international relations*" (pp. 77-82)

This subject has already been referred to above at page 22.

Congress has power to "regulate commerce with Foreign Nations." How that can include the power to impair purely domestic private contracts we cannot perceive.

Under this same heading at pages 80-82 the Petitioners' attempt to meet the argument, which they say was made below, that the real purpose of the Joint Resolution was to relieve debtors. And they cite many cases to the effect that Congress may exercise its lawful powers for whatever purpose it chooses, "with a view to the needs of the country."

But the argument we made below and we make here is very different from the one the Petitioners purport to answer. We concede the right of Congress to exercise any lawful power for any purpose not inconsistent with the scope of the power. We concede that this Court will not, as a rule, inquire into the motives of Congress. But we say that *the Joint Resolution was not an exercise of any lawful power, and if the gold clause contracts obstructed any purpose of Congress, that purpose was not within the scope of any lawful power.*

At pages 80-82 the Petitioners virtually concede that by its monetary program Congress wished simultaneously to increase dollar prices and at the same time not increase the dollar or nominal amount of gold clause debts. The purpose was thus to impair the *real* value of the gold clause obligations. And, since the Joint Resolution had nothing to do with prices or anything else except the gold clause obligations, its *sole* purpose and effect was to impair such obligations.

We do not question that Congress, in the exercise of lawful powers, can and frequently does produce an indirect effect on prices. Thus, in the exercise of the borrowing power, it can issue new irredeemable paper money. The Federal Reserve Board, an agent of Congress, can influence prices through open-market purchases and sales of Government bonds, and there are many other ways in which prices can be affected by governmental action.

But none of these various ways requires the abandonment of the established standard of value. They are all steps taken without disturbing that standard and their effect is limited by the operation of the standard itself, since prices continue to be stated in terms of the standard.

We do not even go so far as to say that Congress may not create a new standard of value if it chooses. But we do say that if Congress substitutes a new standard of value and eliminates from outstanding obligations clauses providing that they shall be measured by the preexisting standard, it acts solely and directly to impair the obligations.

When there is an existing standard of value and all circulating money is maintained on a parity with it, all other prices are necessarily fixed in terms of that standard. They may fluctuate widely, but they fluctuate in terms of the standard. Parties who make a contract and agree that the obligation of the contract shall be measured by the standard accept the risk of all price fluctuations. But they do not accept the risk of having a new standard substituted and applied to their contract.

The facts are not obscured by the Petitioners' reference to the "abnormal price of gold itself" (p. 82). No one knows what is a "normal" price of anything. These bonds were issued in 1903, and, if an attempt were to be made to give the Bondholders the equivalent measured by any "price level," 1903 prices would control. But when they speak of "the abnormal price of gold itself," the Petitioners establish the fallacy in their argument. The price of gold cannot be abnormal, if gold is the standard.

In concluding on this subject we would add that the statement that "the Proclamation of the President reduced the weight of the gold dollar and brought the statutory value into substantial conformity with the new exchange ratio" (p. 80) is misleading if it was intended to convey the impression that the new exchange ratios were established by

normal business and foreign exchange transactions. They were established by the Government's policy of purchasing gold at increasing prices in dollars (see below pp. 31-32).

"D. *Power over contracts*" (pp. 82-87)

This heading reads as if Congress has an affirmative grant of power over contracts. Of course, it has none.

The *obiter* remarks of Justice BRADLEY in *Knox* v. *Lee,* 12 Wall. 457, 566-567, quoted at page 86 of the Petitioners' Brief, have already been referred to. He was writing for himself alone in that case, and differed with the majority of the Court in *Trebilcock* v. *Wilson,* 12 Wall. 687. Yet all he said on the subject was that he did not understand the majority of the Court were making a decision on a question not before the Court.

A much clearer indication of the majority view is to be found in *Bronson* v. *Rodes,* 7 Wall. 229, 253:

> "Can judicial sanction be given to the proposition that the government may discharge its obligation to the depositors of bullion by tendering them a number of note dollars equal to the number of gold or silver dollars which it has contracted by law to pay?"

"4. No Constitutional Limitations are Infringed by the Resolution" (pp. 87-96)

The Fifth Amendment has already been discussed (see our Main Brief, pp. 47-48, 60-62).

The Joint Resolution was not an exercise of any lawful power. *Louisville & Nashville Railroad* v. *Mottley,* 219 U. S. 467, *Philadelphia B. & W. R. R. Co.* v. *Schubert,* 224 U. S. 603, *Calhoun* v. *Massie,* 253 U. S. 170, and the other cases cited, do not help the Petitioners. In each of these cases Congress exercised a constitutional power the incidental effect of which was to affect contracts which were made before Congress acted. Such incidental effect was lawful. That is not

this case and is nothing like it. By this Resolution Congress does not purport to be regulating the value of money. The effect of the Resolution is not indirect or incidental. Its sole purpose and effect are directly to change all gold clause contracts and impair their value.

"5. The Joint Resolution is Controlling in the Case at Bar" (pp. 96-97)

We have assumed that the Joint Resolution covers the case at bar, although the use of the words "dollar for dollar" is rather incongruous, since a gold clause obligation is not a simple dollar obligation and we now have a new dollar.

"II"

"Independently of the Joint Resolution there is no basis for allowing the respondents' claim in other than the face amount of the bonds" (pp. 98-136)

"1. Analysis of the Argument" (pp. 98-101)

For the reasons stated at pages 1-4 above the entire argument under this subdivision of the Brief, from pages 98 to 136, is irrelevant, for it is based either on the proposition that the obligation was to pay coin merely and not to pay value, or on the proposition that the Respondents' rights are to be determined as of May 1, 1933.

However, since this part of the Brief sets forth the Petitioners' contentions with regard to the construction of the gold clause, and contains many statements which cannot be permitted to go unanswered, we shall reply to it as briefly as possible.

In the "Analysis of the Argument" the contention is first made that the gold clause merely provides for coin. That contention is discussed below.

Then, taking what we believe to be the true construction, that the clause provides for payment of gold value, the Petitioners say that "the question of the date as of which

the equivalent should be determined becomes controlling" and they assert that the correct date is May 1, 1933 (p. 100).

This last contention is not only mistaken for the reasons given above at pages 3-4, but is inconsistent with the statement made by the Petitioners only three pages before, where the law was correctly stated (p. 97):

> "* * * The obligation continued, after May 1, 1933, to be one to pay according to the face of the bonds; it did not become at that time one to pay a different amount as damages for breach. Compare *Hicks* v. *Guinness*, 269 U. S. 71, with *Deutsche Bank Filiale Nurnberg* v. *Humphrey*, 272 U. S. 517."

By "face" the Petitioners must have meant "terms," for the terms of the bonds did not change as a result of the default. The mortgage lien continues according to its terms until it is paid unless it has been changed by some constitutional authority, and the Joint Resolution of June 5, 1933, is the only enactment which has undertaken to change the terms of gold value obligations.

"2. Analysis of the Gold Market as Affected by Congressional Acts and by Gold Orders" (pp. 101-114)

The whole argument under this head is material only if the Railway Company was obligated to pay coin merely.

But, simply to clear the record, it should be said

First, that it was the Executive Order of April 20, 1933, referred to at page 103 (Appendix to Petitioners' Brief, pp. 18-20), which resulted in the country's going "off the gold standard."

Second, that from April 20, 1933, to January 31, 1934, the dollars circulating (other than gold coin and gold certificates) fluctuated at a disparity from the standard gold dollar (Petitioners' Brief, p. 106).

With respect to the initial departure from the gold standard the Commercial & Financial Chronicle wrote on July 1, 1933 (Vol. 137, Number 3549, p. 1, italics ours):

> "On Wednesday the foreign value of the American dollar was down to 76½¢ as against the 100¢ which was its customary value before the Administration at Washington *deliberately chose* to take this country off the gold standard and to invite the very depreciation of the American unit that is now proceeding in such an astounding fashion."

But apparently the goal of the Government was an even lower dollar than fear of devaluation produced. This was accomplished through the purchase of foreign gold with dollars, first by the U. S. Treasury and then by the Reconstruction Finance Corporation. These two government agencies offered more than the market price for gold in dollars, thus driving the dollar down (For specific examples see Commercial & Financial Chronicle for October 28, 1933, Vol. 137, pp. 3024-3025).

Third, that gold coin was never legally withdrawn from circulation until January 30, 1934, by the Gold Reserve Act; (Act of January 30, 1934, C. 6, Sec. 5, 48 Stat. 340).

Since the question is whether there is still a valid and subsisting gold value mortgage, and it makes no difference what might have happened if payment had been made on May 1, 1933, it is not our purpose to comment on the contentions at pages 98-114. We must say, however, that it seems to us that the contentions advanced, if sound, exclude gold from the protection of the "just compensation" clause of the Fifth Amendment, and that, if gold can be so excluded, we know of no reason why everything else cannot also be excluded by establishing a "commodity" dollar or some other new unit and placing a nominal price on any property the Government may choose to take.

At the present time there is not the slightest difficulty in computing the gold value of the mortgage. Indeed, the Petitioners have practically computed it themselves (p. 49).

But we are not concerned for the present only. We are concerned for the future. The Railroad Company has

not tendered anything in payment of the mortgage. No one can say when it will, or what the dollar will then be.

Furthermore, if gold value were paid now, as the mortgage requires, the bondholders could obtain more in new dollars than the numerical amounts specified in the bonds. They could obtain the true equivalent of the gold value agreed to be paid.

"3. The Gold Coin Interpretation" (pp. 114-134)

"A. *The gold clause should be interpreted to call simply for payment in gold coin*" (pp. 114-123)

"(I) INTENTION OF THE PARTIES AS EXPRESSED" (pp. 114-118)

The construction of the gold clause is discussed in our Main Brief at pages 19-33.

It is under this heading that the Petitioners virtually concede the true interpretation of the gold clause. For they say (p. 115) that "by providing that the gold coin so paid shall be of a particular standard, *it attempts to assure against payment in coin of lesser gold content.*"

If the Petitioners can tell *simply from reading the clause* that the parties were *attempting* to assure against repayment in coin of lesser gold content, the *intent* of the parties is clear. If it is clear from a mere reading of the clause what the parties were attempting to do, the question whether their attempt was legal has no bearing when we are determining their intent. Clearly the Petitioners conceded that the parties *intended,* among other things, to "assure against payment in coin of lesser gold content."

With this concession, what is there left to discuss with regard to the construction? If the mortgage cannot be discharged by paying the numerical amount in "coin of lesser gold content," how can it be discharged by paying the same numerical amount in dollars which are by statute and maintenance of parity equal to such coin? For the Petitioners also concede that the clause was intended to "protect against depreciation of * * * paper money compared with gold" (p. 115).

The argument about negotiability cannot carry any weight. The bonds were negotiable when they were issued, since they called for payment of a "sum certain" in money then lawful. Possibly the gold clause might have had the effect of making them non-negotiable if the standard dollar were changed. But, if so, it is of no importance. The parties had a dominant purpose to provide for gold value; the Railway Company called the bonds "Gold Bonds." And the existence of any desire of the Railway Company to have the bonds negotiable must be inferred from the most meagre references to the subject in the bonds and mortgage.

"(II) BRONSON *v.* RODES AND SUCCEEDING CASES SUPPORT THIS CONSTRUCTION" (pp. 118-120)

Butler v. *Horwitz*, 7 Wall. 258, and *Dewing* v. *Sears*, 11 Wall. 379, seemed to hold that, if gold coin be in circulation, even a defaulting debtor on a gold coin obligation is entitled to have a gold coin judgment entered against him rather than a judgment for the equivalent in dollars, simply, if the latter are not at a parity. So long as gold coin is in circulation there is no real reason why the judgment should not be stated in gold coin. But in *Gregory* v. *Morris*, 96 U. S. 619, this Court said (p. 625, italics ours):

> "While we have decided that a judgment upon a contract payable in gold *may* be for payment in coined dollars, we have never held that it *must* be so."

And *Gregory* v. *Morris* did involve a gold obligation. It is true that the suit was not "upon the contract," but it seems perfectly clear from a reading of the whole case that the gold obligation measured the amount of the recovery.

The significant thing about the cases decided by this Court involving gold obligations is that in every case the Court gave a just judgment, whether for gold coin or the equivalent.

"(III) ENGLISH AND PERMANENT COURT CASES DISTINGUISHED" (pp. 120-123)

It may be possible to "distinguish" these cases by pointing out trivial points of difference, but the great principles they established apply here (see our Main Brief, pp. 24-31).

"B. *Payment in gold coin has been and is impossible and illegal and should be excused*" (pp. 123-127)

"(I) IMPOSSIBILITY IN FACT" (pp. 124-125)

"(II) IMPOSSIBILITY IN LAW" (pp. 125-127)

"C. *The gold clause obligation may be satisfied by payment of its stated dollar amount, in consequence of impossibility in fact and in law*" (pp. 128-130)

Since the arguments under these heads are based on the premise that the gold clause called for coin merely, it is unnecessary to answer them for the reasons given above (pp. 1-3).

"D. *Even if respondents were paid at any time in gold coin its value to them would be only the face amount thereof*" (pp. 131-134)

The only reason why it is necessary to reply to this argument at all is because it is asserted at page 133 that the Respondents "are seeking a windfall—not indemnity for loss." This is an astounding statement and as fallacious as it is unfair.

The bondholders loaned money on terms offered by the Railway Company. They ask nothing except that the debt be paid in the amount which the Railway Company agreed to pay.

Even the supposition advanced as to what might have happened if the debt had been paid on May 1, 1933, is fallacious, if it is intended to convey the idea that the bondholders would have received only so many dollars then and should receive only the same number of dollars if and when

the mortgage is satisfied. They are talking of two different kinds of dollars—different both in gold value and different in worth in terms of everything else.

It is only because the dollar devaluation did not have all the expected results that this claim of "windfall" is even advanced. For if, as was expected, all prices and values had risen proportionately, it would be apparent even to the unthinking that the new dollars were proportionately less valuable than the old except to pay fixed simple dollar obligations.

And for one other reason it is unfair as well as irrelevant for the Petitioners to write of the present prices. The mortgage is not being paid now. No one knows what the "price level" will be when it is.

"4. The Currency Equivalent Interpretation" (pp. 134-138)

"A. *The currency equivalent is the stated dollar amount of the obligation*" (pp. 134-136)

"B. *Even if currency equivalence is defined in terms of statutory price of gold the obligation may be satisfied at its dollar face amount in legal tender, since conversion is appropriate as of May 1, 1933*" (pp. 136-138)

The same fallacy and unwarranted charge are advanced under these headings.

The respondents demanded "coin" in their intervening petition, filed in December, 1933 (R. 60), because it was the proper demand to make at that time under *Bronson* v. *Rodes*, 7 Wall. 229. The Gold Reserve Act had not been passed and gold coin was lawful money of the United States.

The Respondents say that it is necessary "to select a standard for determining such equivalence" (p. 134). That is perfectly true, except that *the standard has already been selected by the parties.* It was the gold standard of May 1, 1903. Measured by that standard the determination of the equivalence today is a matter of simple arithmetic.

The Petitioners imply that there has been some change in the Respondents' contention as to the proper way to compute gold value (p. 134). On December 27, 1933, the "market value" was the true measure. It still is. But all current dollars are now maintained on a parity with the new statutory gold dollar, and, so long as that condition continues and the new statutory gold dollar remains unchanged, the gold value of the old gold dollar can be readily computed in terms of the new gold dollar merely by reference to the statutes and the President's Proclamation of January 31, 1934 (Appendix to Petitioners' Brief, pp. 144-148).

Guesses about what the bondholders might have done or may do with their money are not material (p. 136). The bonds were not "purchasing power" obligations. They were not simple dollar obligations. They were gold value obligations.

The bondholders were prepared to take, and did take, all the risks involved in investing money in a thirty-year contract on such terms. Those risks included the possibility of wide fluctuations in the prices of other things measured in gold value. But the bondholders did not assume the risk of being paid less gold value as a result of dollar devaluation. They were expressly protected against that. The only question here is whether Congress had a right to remove that protection simply because the time came when the bondholders needed the protection.

"III"

"Power over coinage and currency is an attribute of sovereignty" (pp. 138-154)

We do not agree that this proposition has any application to this case except to establish the unconstitutionality of the Joint Resolution.

Congress has every necessary power to secure "a wholesome and uniform currency throughout the Union," as

Justice STORY said (Petitioners' Brief, p. 142); to "satisfy the wants of the community in respect of a circulating medium" and "secure a sound and uniform currency," as Chief Justice CHASE said in *Veazie Bank* v. *Fenno,* 8 Wall, 533, 549.

But this Court has also said that a standard of value is "indispensable to the community" and that Congress has "the trust and the duty of creating and maintaining a uniform and pure metallic standard of value throughout the Union" (*U. S.* v. *Marigold,* 9 How. 559, at pp. 566, 567).

It was long thought, and many still believe, that a currency which is not exchangeable for a fixed quantity of precious metal cannot be "sound." Opinions now differ. We do not ask the Court to hold that Congress must maintain a fixed metallic standard. But we do contend that if Congress does establish a fixed standard, and contracts lawfully and expressly incorporate it, Congress cannot change those contracts.

Otherwise, we can never have anything except a standardless commerce. For a dollar which contains no fixed amount of precious metal and which can be issued in unlimited quantities may prove to have no value at all. And if, after a standard has been fixed, a new standard can be substituted and the substitution applied retroactively to contracts which expressly incorporated the original fixed standard, it means that the original standard was not truly fixed for any real purpose. The necessary result is that Congress will always have the power to destroy the real value, measured in anything but "dollars" (which might come to have no value), of all money contracts by whatever so-called standard made.

Can it be consistent with the power of Congress to provide a sound currency that Congress should be powerless to establish a standard of value on which reliance will be placed because of confidence in the standard itself? Surely any such interpretation of the coinage power is not only at vari-

ance with what this Court said in *U. S.* v. *Marigold,* 9 How. 559, 566, but is the complete negation of everything the Court there said. For it means that, instead of having a duty of creating a metallic standard, Congress cannot establish any metallic standard which can properly be called such.

The expectation of the framers of the Constitution was that money would be coin and would be the standard of value also. From 1792 to 1933 we had for all practical purposes the same standard gold dollar. The growth of the nation took place *while* the standard was maintained, and who will say that it was not largely *because* the standard was sound and was maintained? Our most distressing periods have *coincided* with attempts to change the standard, and who will say that the attempts did not increase the distress? Never in our history has it been supposed that any authority could impair a contract which incorporated a standard by striking out the standard. Who will say that the security and confidence resulting has not been a principal factor in our growth and prosperity? We now have a currency, but no real standard. Can anyone know that in the long run a real standard will not prove "indispensable to the community?" (*U. S.* v. *Marigold,* 9 How. 559, 567.)

Where Congress has fixed a standard and parties have incorporated it in their contracts, it is so destructive of all security for Congress to assert the power to strike the standard from the contracts that the implications of such a power must be apparent.

In the last analysis, the question is whether Congress has a plenary power over money contracts. If the latter be true, it is difficult to see how the constitution would have been very different if it had contained an express delegation of power to enact laws for the relief of all debtors, solvent as well as insolvent. Congress has had no power to do that, and the states have been expressly prohibited from doing it. The resulting confidence in the inviolability of contracts

must have had much to do with our development as a nation, and we most emphatically cannot agree that any situation has yet arisen which requires the abandonment of the great principle involved.

CONCLUSION

A careful reading of the Petitioners' Brief clearly establishes that the purpose and intended effect of the Joint Resolution were to impair the real value of gold clause obligations.

The Brief discusses four factors in the situation with which the monetary policy was supposed to deal, (1) the "price level," (2) the "debt burden," (3) the Government's desire to "borrow money on the credit of the United States," and (4) the state of foreign commerce. Two of these factors can be dismissed.

This Court's statement in *Lynch* v. *U. S.*, 292 U. S. 571, 580, sets forth the true relation between the Joint Resolution and the credit of the United States.

The Agricultural Adjustment Act itself shows that, *in so far as the state of foreign commerce influenced the monetary policy, the purpose was to raise prices* (Act of May 12, 1933, Secs. 1, 2, 43; 48 Stat. 31-32, 51-53).

The two real factors in the situation which Congress sought to affect were, therefore, the "price level" and the "debt burden." They were clearly at the heart of the whole monetary policy. The Agricultural Adjustment Act recited that its purpose was to increase the price of farm commodities (Act of May 12, 1933, Secs. 1, 2, 48 Stat. 31-32). The author of the Thomas Amendment said that its purpose was to transfer property from creditors to debtors (*supra*, pp. 16-17). The "price level" and the "debt burden" were not isolated factors. It was their relation to each other which was important.

The situation in the Spring of 1933 was that prices were low, *as compared to prices from 1921 to 1929.* The Department of Labor had taken 1926 as an *index* year for the

purpose of showing variations in certain price averages, not with any idea that 1926 was "normal," because there is no such thing as a "normal" price even of a single thing. But the 1926 Index came to be used, as the Petitioners use it (p. 33), as if 1926 had been the "normal," and the notion was advanced that debtors were being called upon in 1933 to pay more than they had borrowed. Of course, they were not *in dollars* or *in gold value.* Whether the dollars had a greater worth in terms of *other things* than the dollars they had lent depended on *when they had lent the money* and *what other things were used as a basis of comparison.* As a matter of contract rights, it was immaterial. But the fact was that a large amount of debt had been created when prices were high and was not easy to liquidate when prices were lower.

In providing for the devaluation of the dollar and the abrogation of gold clauses, Congress clearly intended to increase nominal prices and to prevent an increase in the nominal amount of gold clause debts. Indeed, applying the principle that reasonable men are presumed to intend the consequences of their own acts, *Congress could not have had anything else* in mind. While Congress said in the Joint Resolution that the gold clauses were an obstruction to the devaluation of the dollar, it is perfectly clear that they were not an obstruction to the devaluation itself, and could not obstruct any purpose of the devaluation except the purpose to reduce the real value of outstanding gold clause obligations. The mere assertion that they were an obstruction was, for all practical purposes, an announcement of the real purpose of the devaluation.

Congress, however, decided to devalue and abrogate the gold clause contracts. And what happened? The price rise apparently did not take place to the extent expected.

For the asserted failure of the devaluation to produce a corresponding rise in prices is now advanced as a reason why the Joint Resolution should be sustained (pp. 135-136; see Chart in Petitioners' Brief, p. 33). The Respondents,

Trustees of a Mortgage, owing clear duties to the beneficiaries of their trust, are accused of seeking a "windfall." There would have been no such accusation if the devaluation had already accomplished what it was expected to bring about. Nor is it certain or even likely that there will be a "windfall." The status today has nothing to do with the case.

If the bondholders were offered today 1,000 new dollars for every bond they might all accept them and the Trustees would then have no duty to perform. But no one has offered the bondholders anything. Congress and the Court below have said that they can be paid the nominal amount of *any kind of dollars.* They may not be paid until 1938 or 1940. What will be the value of the dollar then? Even if there be no further devaluations, belated results from the devaluation already effected may be felt and may result in a tremendous rise in prices.

The bondholders had faith in gold value. They did not have the same faith in dollars, simply. The Railway Company promised them gold value. They bought the bonds. Can anyone say that they were not wise in asking for gold value bonds, or that the mortgage should be paid with less?

There is no doubt that the situation in 1933 was serious, or that it is serious now. There is no question that Congress was the body to decide what constitutional action should be taken to meet it. And in determining whether action taken was constitutional or not great weight can properly be given to changed conditions.

But, we submit, the situation in 1933 did not require the abandonment of any great constitutional principle. Nor does the situation today. We are not such a weak people that four years of economic maladjustment, however serious, will induce us to abandon principles of government which have served us well for 140 years.

That is, we submit, what those who seek to sustain the Joint Resolution ask us to do. For the Joint Resolution

cannot, we believe, be sustained unless the Federal Government has, and always has had, the power to compel its citizens to make their money contracts in dollars, simply, and also the power to change any fixed standard of value established by law and to apply such change to outstanding contracts which have expressly incorporated the standard. There is no reason why the Federal Government should be found to possess any such powers unless it be in order that the Congress may control all money contracts.

The power to "coin money, regulate the value thereof" was not intended to embrace, and no reasonable construction of it does embrace, a power to regulate money contracts.

If it is to be said that Congress may control all money contracts, the theory must be that Congress may and should exercise its power "to coin money, regulate the value thereof" from time to time to change the relation between the "price level" and the "debt burden." This, of course, means that Congress is not to establish a fixed standard of value, and that prices and all other relative changes will not be determined by normal business based on that standard of value, but that Congress is to have complete control over all money contracts by compelling all business to be done in a variable medium of exchange, simply, and that prices, debts, wages and other factors are supposed to respond to that control.

The important thing is that the Joint Resolution, if valid, necessarily effects a permanent change, not only in the gold clause contracts, but in the relation of Congress to all money contracts. By denying the right to use a fixed amount of gold as a standard of value, it impliedly prohibits the use of any other standard or measure of any kind, whether established by law or not. By asserting the power of Congress to eliminate from all money contracts all provisions incorporating the very standard which Congress itself has established, it necessarily implies that any other standard Congress may establish will be equally insecure. Thus it commits the country to the theory that a "sound and uniform currency"

in the old sense is *permanently* a thing of the past, and that the true scope of the money power is to regulate prices and debts.

Such a power over money contracts would so alter the fundamental character of our government that it is not too much to say that it would be entirely inconsistent with the conception of a government of limited powers. If the real function of Congress is to raise and lower nominal prices and to increase and decrease the real value of money obligations through the management of the currency, is it not incongruous that it should not have the power to correct maladjustments between the prices of different things or between different kinds of money obligations? Indeed, will not prices of certain things or particular classes of debts be found to be an "obstruction" of this broad money power, and regulated on that theory? And, of course, wages are simply prices for personal services.

This is not a fantastic supposition. In an address at Cleveland, Ohio, on November 10, 1933, which is reported in *The United States Law Week* for November 14, 1933, Vol. 1, No. 11, p. 179, the General Counsel of the National Recovery Administration, Donald R. Richberg, said:

> "The Congress is also expressly empowered 'to coin money' and to 'regulate the value thereof'—and the implications of this power have received, so far as I am aware, no consideration from those who have questioned the validity of the Recovery Act. But it has been universally recognized that the regulation of the value of money is a necessary part of any program of economic recovery. The difficulty of regulating the value of money by the gold standard has been increased by the lack of a definite relationship between a quantity of gold, which is used as a token of value, and a quantity of human labor which is the persistent actual standard of the value of goods and services. It should not be necessary to indulge in an elaborate discussion of economic theories to demonstrate that the Federal Government would be acting within its acknowledged powers in seeking to relate

> the value of money to a certain quantity and quality of labor, and that one appropriate method to employ would be to establish a basic standard of maximum hours and minimum wages for labor. The establishment of such a standard would play a useful part in regulating and stabilizing the value of money."

See also *Hart Coal Corp.* v. *Sparks*, 7 Fed. Sup. 16, 28.

We ask the Court to consider the significance of the assertion by such an authority that Congress has the power *"to relate the value of money to a certain quantity and quality of labor."* It simply means that Congress possesses the power to fix any wage at any time if the wage is payable in money. And the theory that a quantity and quality of labor is a true standard of value involves no more new concepts than a theory that a quantity and quality of land or commodities would be such a standard. If Congress has the power to fix all wages it also has the power to fix all prices.

A power to fix all prices and all wages seems to us so at variance with any concept of a government of limited powers that no further observations are necessary. The true position of the General Counsel of the National Recovery Administration and of the Petitioners here is that we should have a Federal Government of unlimited powers, that we should have a different constitution.

The decree below should be reversed.

Respectfully submitted,

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29 December, 1934.

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IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1934.

No.....

In the Matter of Missouri Pacific Railroad Company.

Brief of H. W. O'Melveny, Walter K. Tuller and Louis W. Myers, as Amici Curiae in Support of the Validity of the Gold Clause in the Bond and in Support of the Proposition That the Joint Resolution of Congress of June 5, 1933, Is Unconstitutional and Void.

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Parker, Stone & Baird Co., Law Printers, Los Angeles.

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The undersigned members of the Bar of this Court have causes pending in the courts of the United States in the Ninth Judicial ~~District~~ Circuit involving the same question presented in this cause. They, therefore, with permission of the counsel in this cause, respectfully ask that this brief be considered by this Court.

The Gold Clause Fixes the Measure of the Obligation of the Contract.

This is clearly what the parties intended, viz., to fix the measure of value which one would be obligated to pay and the other entitled to receive. They were not primarily concerned in the *mode* of payment. They were primarily concerned in fixing the *measure* of the obligation. The creditor is concerned that he shall receive a value equivalent to what he loaned and not a lesser amount. The debtor is concerned that he shall not be required through some change in fiscal policy, to pay a larger value than he received and agrees to repay. Had the agreement been made merely to repay a certain number of dollars simply, without specifying any kind of dollars or other standard of value, then if the value of the dollar had been increased the debtor would have to pay more than he received, whereas if the value of the dollar had been decreased the creditor would receive less. It was to avoid this possibility and to fix a definite standard or measure of value which should determine and measure the amount of the obligation, that the Gold Clause was inserted by the parties. To hold that it merely fixed a mode of payment would be to make a contract quite different from that which the parties intended. As reasonable men they must have recognized the possibility that, as a mere mode of payment, it might not be legal or possible to comply with it at a time in the future when the obligation was to fall due. The possibility that nations may go off the gold standard has been a well known economic fact throughout all modern history. The parties must have realized, therefore, that it might not be possible to regulate any mere *mode* of payment. It was perfectly legal, reasonable

and proper, however, for the parties to agree that gold coin of the existing standard of weight and fineness or its equivalent in value should be made the *measure* of the obligation. The borrower loaned and the lender received such gold coin or its equivalent value. The natural and reasonable agreement with regard to repayment was that the one should be obligated to repay and that the other should be entitled to receive an equivalent value. The fact that the parties contemplated that there might be a change either in gold content or in fineness is expressed on the face of the clause itself. It contains the words "equal to" the present standard of weight and fineness. This shows that the parties contemplated the possibility of changes either in the weight of gold or its fineness and that in the event of such a change the equivalent of the existing standard should be paid.

We submit, therefore, that the only construction to give to the Gold Clause that is consonant with the realities of the situation and the evident intent of the parties is that it fixes, not a mere mode of payment, but the measure of the obligation which one was bound to pay and the other was entitled to receive.

The authorities are to the same effect. A number of recent decisions of courts of great authority hold that the Gold Clause fixes the measure of the obligation, which, if discharged in any medium of payment other than the specified gold coin, must be paid in such amount of that medium as has a value equivalent to the specified amount of gold coin. It was so held by the Permanent Court of International Justices in the *Serbian Loan Cases,* Series A, 1929, Nos. 20 and 21; again in the case of the *Brazilian Loans,* same volumes, Nos. 20 and 21. The

same ruling was made by the House of Lords in *Feist v. Societe,* L. R. 1934, App. Cases 161. The same ruling was made, we understand, by the Greco-Bulgarian Mixed Arbitral Tribunal in *Stavrides v. Grebenaroff,* 6 Recueil des Decisions de Tribunaux Arbitraux Mixtes 317; also by the Supreme Court of Denmark in a decision rendered January 21, 1933 in *Zeitschrift Fur Aus Landisches und Internationales Privatrecht,* 960; and by the Supreme Court of Finland in a decision rendered January 18, 1933, same volume, at page 467. We have not been able to secure texts of the decisions of the Mixed Tribunal nor of the Supreme Courts of Denmark or Finland, but are advised that they are to the same effect as the decisions of the Permanent Court and of the House of Lords.

In the *Serbian Loan Case,* the bond provided:

> "Repayable in gold at par in 72 years" (page 29).

In holding that the bonds clearly intended to fix the measure of the obligation and that if payment was to be made in anything other than the gold coin specified, it must be an amount equivalent in value to such gold coin, the court said (page 32):

> "It is quite unreasonable to suppose that they (the parties) were intent on providing for the giving in payment of mere gold specie, or gold coins, without reference to a standard of value. The treatment of the gold clause as indicating a mere modality of payment, without reference to a gold standard of value, would be, not to construe but to destroy it."

Again on page 33, the court said:

> "The 'gold franc' thus constituted a well-known standard of value to which reference could appro-

priately be made in loan contracts when it was desired to establish a sound and stable basis for repayment."

Again on page 34 the court said:

"It is concluded that this was the gold standard of value to which the loan contracts referred.

As this standard of value was adopted by the Parties, it is not admissible to assert that the standard should not govern the payments because the depreciation in French currency was not foreseen, or, as it is insisted, could not be foreseen at the time the contracts were made. The question is not what the Parties actually foresaw, or could foresee, but what means they selected for their protection. To safeguard the repayment of the loans, they provided for payment in gold value having reference to a recognized standard, as above stated."

Again on page 40 the court said:

"It is contended that under the operation of the forced currency regime of France, pursuant to the law of August 5th, 1914, payment in gold francs, that is, in specie, became impossible. But if the loan contracts be deemed to refer to the gold franc as a *standard of value*, payments of the equivalent amount of francs, calculated on that basis, could still be made. Thus, when the Treaty of Versailles became effective, it might be said that 'gold francs', as stipulated in Article 262, of the weight and fineness as defined by law on January 1st, 1914, were no longer obtainable, and have not since been obtainable as gold coins *in specie*. But it could hardly be said that for this reason the obligation of the Treaty was discharged in this respect on the ground of impossibility of performance." (Italics ours.)

In the *Case of Brazilian Loans*, the court said (page 110):

> "The reference to payment of interest in gold must be taken to be a reference to gold value and not to a payment in gold coin."

Again, on pages 115-16, the court said:

> "*Significance of the gold clauses.*—One argument against the efficacy of the provision for gold payments is that it is simply a clause of 'style', or a routine form of expression. This, in substance, would eliminate the word 'gold' from the bonds. The contract of the Parties cannot be treated in such a manner. When the Brazilian Government promised to pay 'gold francs', the reference to a well-known standard of value cannot be considered as inserted merely for literary effect, or as a routine expression without significance. The Court is called upon to construe the promise, not to ignore it."

Again on page 117 the court said:

> "The devalorisation of the French franc could not in fact increase the obligations of the latter: the gold clause merely prevents the borrower from availing itself of a possibility of discharge of the debt in depreciated currency.
>
> The argument of the Brazilian Government assumes that the purpose of the gold clauses was to protect against depreciation of some currency. But, if this be so, the protection was sought not simply by agreeing for payment in French francs, but in gold francs. As this standard of value was stipulated, it should be enforced according to its terms and not be limited as referring only to a single object not specified. It was depreciation in value that was the object

of the safeguard, not in this or that particular currency, and it was evidently for this reason that the reference was made to the well-known stability of gold value."

In the *Feist Case*, the House of Lords reversed the lower courts, which had held that the bond provided for a mere mode of payment, and held that it fixed the measure of the obligation between the parties, so that if, for any reason, it was not paid or could not be paid in the specified gold coin, it must be paid in currency having a value equivalent to the specified amount of gold coin. The court discussed the matter at some length and expressed its conclusion as follows:

"In just the same way I think that in clauses 1 and 2 of the bond the parties are referring to gold coin of the United Kingdom of a specific standard of weight and fineness not as being the mode in which the company's indebtedness is to be discharged, but as being the means by which the amount of that indebtedness is to be measured and ascertained.

I would construe clause 1 not as meaning that £100 is to be paid in a certain way, but as meaning that the obligation is to pay a sum which would represent the equivalent of £100 if paid in a particular way; in other words, I would construe the clause as though it ran thus (omitting immaterial words) 'pay * * * in sterling a sum equal to the value of £100 if paid in gold coin of the United Kingdom of or equal to the standard of weight and fineness existing on the 1st day of September, 1928'."

The decision of this court in *Bronson v. Rodes,* 7 Wallace 229, was substantially to the same effect. On page 246, after pointing out that it cannot be doubted that the purpose of the parties in such a clause is to guard against the possibility that the debt might be discharged by the payment "of a fluctuating and perhaps irredeemable currency", this court said (p. 246):

> "The terms of the contract must have been selected, therefore, to fix definitely the contract between the parties, and to guard against any possible claim that payment, in the ordinary currency, ought to be accepted".

Again on page 250 this court said:

> "A contract to pay a certain number of dollars in gold or silver coins is, therefore, in legal import, nothing else than an agreement to deliver a certain weight of standard gold, to be ascertained by a count of coins, each of which is certified to contain a definite portion of that weight. It is not distinguishable, as we think, in principle, from a contract to deliver an equal weight of bullion of equal fineness. It is distinguishable, in circumstance, only by the fact that the sufficiency of the amount to be tendered in payment must be ascertained, in the case of bullion, by assay and the scales, while in the case of coin it may be ascertained by count.
>
> We cannot suppose that it was intended by the provisions of the currency acts to enforce satisfaction of either contract by the tender of depreciated currency of any description equivalent only in nominal amount to the real value of the bullion or of the coined dollars. Our conclusion, therefore, upon this part of

> the case is, that the bond under consideration was in legal import precisely what it was in the understanding of the parties, a valid obligation to be satisfied by a tender of actual payment according to its terms, and not by an offer of mere nominal payment. Its intent was that the debtor should deliver to the creditor a certain weight of gold and silver of a certain fineness, ascertainable by count of coins made legal tender by statute; and this intent was lawful."

And again at the bottom of page 253, this court said:

> "Can judicial sanction be given to the proposition that the government may discharge its obligation to the depositors of bullion by tendering them a number of note dollars equal to the number of gold or silver dollars which it has contracted by law to pay?"

Butler v. Horwitz, 7 Wallace 258, is to the same effect.

In *Trebilcock v. Wilson*, 12 Wallace 687, this court held that a promissory note payable by the terms in specie could not be satisfied against the will of the holder by the tender of notes of the United States declared by Congress to be legal tender. It was held that the words "in specie" fixed the obligation as being payable only in gold or silver coin. The court then reaffirmed *Bronson v. Rodes*.

In *Gregory v. Morris*, 96 U. S. 619, this court, in a unanimous decision, held that where a party entitled to recover a certain amount in gold coin takes with the approbation of the court, a judgment which may be discharged in currency, the judgment should be for a sum equivalent in value to the specified amount of that coin as bullion. *Bronson v. Rodes* is reaffirmed. This case also, we submit, is a direct holding that the Gold Clause fixes the

measure of the obligation and that if the obligation is paid in another medium than the coin specified, it can only be discharged by the payment of such amount of that medium as has an equivalent value.

In *U. S. v. Erie Railway Co.*, 107 U. S. 1, this court reaffirmed *Gregory v. Morris*, saying:

> "In other words, the debt was in the nature of an obligation to pay in coin, but which the government would not receive in anything but legal-tender currency of equal value with the coin. This is a suit for the recovery of that debt as a debt. If there were now any difference in value between coin and currency, it would have been proper to render the judgment for the coin or its equivalent in currency. *Gregory v. Morris*, 96 U. S. 619. As there is no such difference, a general judgment for the amount due is all that is necessary. The amount of the debt was always a fixed sum in pounds sterling. The provision for the estimation of the value of this debt in legal-tender currency was, in our opinion, a regulation of the mode of collection, and not a change in the amount of the obligation."

It is respectfully submitted, therefore, that the contract of the parties, both in its intent and its legal effect was and is that the debtor shall pay either the specified amount of gold coin, or if, for any reason, this be impracticable or impossible and payment must be made in some other medium, then that he will pay such amount of that other medium as has a value equivalent to the specified gold coin. This, we submit, is the obligation of the contract. To attempt to change this by law is to attempt to impair the obligation of the contract.

The Joint Resolution of June 5, 1933, Is Unconstitutional and Void. It Seeks to Impair the Obligation of Private Contracts. It Further Seeks to Confiscate the Property of One Citizen and Bestow It Upon Another Citizen.

If the contract is, in legal effect, what has just been discussed, then it seems indisputable that the Resolution of June 5 seeks to, and if valid, would, impair the obligation of the contract. It provides that instead of paying the obligation in full, the debtor may discharge it by paying currency having a value of 60 per cent of the obligation. No clearer case of impairing the obligation of the contract could well be conceived.

It is submitted that the decision of this court in *Lynch v. United States,* 78 L. Ed. 997, and similar cases clearly and conclusively establish the principle that such an attempt as this by Congress is unconstitutional and void.

Among other things this court said:

> "The Fifth Amendment commands that property be not taken without making just compensation. Valid contracts are property, whether the obligor be a private individual, a municipality, a State or the United States. Rights against the United States arising out of a contract with it are protected by the Fifth Amendment. (Citing authorities.) * * *
>
> Contracts between individuals or corporations are impaired within the meaning of the Constitution whenever the right to enforce them by legal process is taken away or materially lessened."

The principle was declared and enforced by this court with reference to a State in the recent case of *Worthen Co. v. Thomas,* decided May 28, 1934, 78 L. Ed. 975. It would seem even more clearly to apply to the federal government, which is one of limited power. In that case this court said:

> "* * * this principle precluded a construction which would permit the state to adopt as its policy the repudiation of debts or the destruction of contracts or the denials of means to enforce them."

It seems clear, therefore, that if the obligation of the contract is that indicated, then the Resolution would impair the obligation of that contract and take the property of the creditor without due process of law and without compensation.

Hence, the Resolution is directly contrary to the Fifth Amendment and is void.

Further, the Resolution seeks to take the property of one private citizen and confer it upon another. The right of the creditor to full payment of his contract is property. The Resolution, if valid, would take away 40 per cent of this property and confer it upon the debtor. When it is realized that this Resolution attempts to do the same thing with every debtor and creditor in the United States under similar obligations, the tremendous destruction of property rights which the Resolution attempts can be appreciated. So far as we know, there has never been in modern times, any such attempt on the part of any government

to transfer the property of one class of its citizens to another class of its citizens. Whatever euphonious phrases the apologists for this Resolution may use to describe it, in truth and in fact it is an attempt to, and if valid would have the effect of, spoliating one class of citizens of a vast amount of property and conferring it upon another class of citizens.

The language used by this court in *Loan Association v. Topeka,* 20 Wallace, 655, at 664, seems directly pertinent:

> "There are limitations on such power which grow out of the essential nature of all free governments. Implied reservations of individual rights, without which the social compact could not exist, and which are respected by all governments entitled to the name. No court, for instance, would hesitate to declare void a statute which enacted that A and B who were husband and wife to each other should be so no longer, but that A should thereafter be the husband of C, and B the wife of D. Or which should enact that the homestead now owned by A should no longer be his, but should henceforth be the property of B. *Whiting v. Fond du Lac,* 25 Wis. 188; *Cooley, Const. Lim.,* 129, 175, 487; *Dill. Mun. Cor.,* Sec. 587."

In the same case this court said,

> "To lay, with one hand, the power of the government on the property of the citizen, and with the other to bestow it upon favored individuals to aid

private enterprises and build up private fortunes, is none the less a robbery because it is done under the forms of law and is called taxation. This is not legislation. It is a decre under legislative forms."

In *Chicago, etc. R. Co. v. Chicago*, 166 U. S. 226, at 235, this court said:

"In *Davidson v. New Orleans*, above cited, it was said that a statute declaring in terms, without more, that the full and exclusive title to a described piece of land belonging to one person should be and is hereby vested in another person, would, if effectual, deprive the former of his property without due process of law, within the meaning of the 14th Amendment. See also *Missouri P. R. Co. v. Nebraska Board of Transportation*, 164 U. S. 403, 417 (*ante*, 489, 495). Such an enactment would not receive judicial sanction in any country having a written Constitution distributing the powers of government among three co-ordinate departments, and committing to the judiciary, expressly or by implication, authority to enforce the provisions of such Constitution. It would be treated, not as an exertion of legislative power, but as a sentence—an act of spoliation."

This, we submit, is exactly what the Resolution in question attempts to do. It seeks to provide that, without notice or hearing, forty per cent of the class of property owned by creditors in this kind of obligation shall be taken away from them and vested in the debtors. That this would be a denial of due process of law, an impairment of the obligation of contract and "an act of spoliation", seems clear.

So Far as the United States Is Concerned, the Resolution, if Valid, Amounts to an Act of Repudiation by the Government of Its Solemn Promise and Obligation. It Violates the Fifth Amendment.

The government borrowed the money of its citizens upon its promise and agreement to repay in certain gold coin or its equivalent in value. It now seeks by this Resolution to declare that it will repay only 60 per cent of the value which it borrowed and which it agreed to repay. That this is an act of repudiation cannot be denied. Said this court in *Lynch v. U. S., supra:*

> "To abrogate contracts, in the attempt to lessen government expenditure, would be not the practice of economy, but an act of repudiation. 'The United States are as much bound by their contracts as are individuals. If they repudiate their obligations, it is as much repudiation, with all the wrong and reproach that term implies, as it would be if the repudiator had been a State or a municipality or a citizen'. Sinking Fund Cases, 99 U. S. 700, 719, 25 L. ed. 496, 501."

This case further settled the principle that

> "The Fifth Amendment commands that property be not taken without making just compensation. Valid contracts are property, whether the obligor be a private individual, a municipality, a State or the United States. Rights against the United States arising out of a contract with it are protected by the Fifth Amendment. (Citing authorities.)"

The obligation of a bond issued by the United States is the property of the owner of the bond and is, we submit, protected by the Fifth Amendment against the *pro tanto* destruction of that property which this Resolution attempts to accomplish.

The Resolution Also Seems to Violate Section 4 of the Fourteenth Amendment of the Constitution.

That section provides, in part:

> "The validity of the public debt of the United States, authorized by law * * * shall not be questioned".

If the validity of the public debt may not even be questioned, can it be that the Congress may, to any substantial extent, repudiate or destroy it? The answer seems obvious. When the Resolution attempts to require the holders of public debt to accept in full payment 40 per cent less in value than the value which the government agreed to pay, there would seem to be no escape from the conclusion that it attempts, not merely to question, but *pro tanto* to repudiate, the public debt of the United States. This, we submit, violates not only the spirit and purpose, but the express letter of this section of the Constitution.

The provision, like most of those in the Constitution, is couched in general terms. It would be difficult, however, to frame words more clearly expressing the purpose and intent that the public debt shall be a sacred obligation, not subject to any diminution or repudiation by the government. The framers of this section and the states, when they approved it, knew that in the past governments had sometimes repudiated, at least in part, their obligations. The people of the country had made, in the years immediately preceding, vast loans to the government to enable it to preserve itself through the Civil War. The public debt was considered enormous for those times. It was within the realm of probability that a political movement might be started to relieve the government of part

of the debt, either by some scaling down process or some partial repudiation. Indeed, such a plan was actually being discussed in some quarters. This amendment was adopted to make any such action impossible, then or in the future.

[An excellent history of the events leading to the adoption of this section is contained in an article by Phanor J. Eder, Esq., in 19 Cornell Law Quarterly 1 (1933)].

It applies equally today. In relatively recent years the world has seen numerous examples of governments attempting to, and sometimes succeeding in an effort to, repudiate all or part of their solemn obligations. This section of the Constitution, we submit, forbids the government of the United States to repudiate or annul or destroy any part of it. If the Resolution in question were valid, it would accomplish this very thing. Hence, we respectfully submit, it violates this prohibition of the Constitution.

There Is No Element of Impossibility of Performing the Contract.

Once it is realized that the Gold Clause fixes the measure of the obligation, then it is at once obvious that the fact that it is practically, or even legally, impossible to pay in gold coin, does not in anywise render the contract either legally or factually impossible of performance. It is still possible both as a matter of fact and law, to perform the measure of the obligation by paying such amount of legal tender as has a value equivalent to the value of the gold coin. Thus, the measure of the obligation is met without any violation of law.

The argument that the contract is legally or practically impossible of performance was utterly demolished by the

Permanent Court of International Justice in the *Serbian Loan Cases* and the *Brazilian Loan Cases, supra.* It was made to the House of Lords in the *Feist Case, supra,* but that court ruled against it without any particular discussion, from which it seems fair to conclude that it considered it so clearly without merit as not to require particular discussion.

In the *Case of Serbian Loans,* at page 40, in answering the argument that it had become legally impossible to pay in the particular kind of gold coin specified, the Permanent Court said:

> "But if the loan contracts be deemed to refer to the gold franc as a standard of value, payments of the equivalent amount of francs, calculated on that basis, could still be made. Thus, when the Treaty of Versailles became effective, it might be said that 'gold francs' as stipulated in Article 262, of the weight and fineness as defined by law on January 1st, 1914, were no longer obtainable, and have not since been obtainable as gold coins *in specie.* But it could hardly be said that for this reason the obligation of the Treaty was discharged in this respect on the ground of impossibility of performance."

In the *Case* of the *Brazilian Loans,* in overruling the same argument, the Permanent Court said, at page 120:

> "*Force majeure.*—The economic dislocation caused by the Great War has not, in legal principle, released the Brazilian Government from its obligations. As for gold payments, there is no impossibility because of inability to obtain gold coins, if the promise be regarded as one for the payment of gold value. The equivalent in gold value is obtainable."

The Question Here Involves the Fundamental Concept Upon Which Our Government and Every Constitutional Government Is Based.

It seems to us it is not too much to state that this case involves the question whether, in fact, we have a constitutional government. There are really only two basic theories of government. The first is that the government is everything—the citizen nothing; whatever rights the citizen holds are really mere privileges extended by the grace of the government which it may recall or withdraw at any time. From this it is but a short step to the famous pronouncement of Louis XIV, *"L'etat, c'est moi"*. This represents the monarchic or despotic idea of government in which the citizen has no rights, only privileges, which the government can override at will. The other and contrasted fundamental theory is the constitutional concept. That is based upon the concept that the citizens, the People, are the sovereign and that the government has only such rights and powers as are granted to it by the people. The very heart of this principle is that the individual citizen has rights, not mere privileges, which the government has no power to impair. The famous words in the Declaration of Independence "that all governments derive their just powers from the consent of the governed" are not mere rhetoric, but are expressions of this fundamental concept upon which our form of government is based. There can be no dispute of the fact that among the rights which the people intended to reserve and to prohibit the government from destroying, were the right to be secure in their property; to have their valid contracts free from impairment by the government; that the government could not take the property of one

citizen and confer it upon another; that if the property of a citizen was to be taken for public benefit it could be done only upon the payment of just compensation and in accordance with due process of law.

This case may determine whether, in fact, we have such a government. The Resolution in question seems to be based upon the fundamental concept of government which is the very antithesis of the concept on which our government is supposed to be based. It seems to proceed upon the theory that the government is supreme; that the property and the contract rights of citizens are held subject to the will and pleasure of the government; and that if the government chooses to destroy or impair them the citizen has no redress; that the government may take the property of one citizen and confer it upon another; that it may violate its own promise to the citizens upon the faith of which promise they have loaned it money, all without redress. If this be true, then we respectfully urge, we do not have, in fact, a constitutional government. The Constitution has two main functions: *First*, to set up the machinery of government and apportion the functions of government among the various agencies provided; *second*, and even more important, to impose limitations upon the power of the government in respect to its control over the citizens and to guarantee to the citizens certain rights which the government has no right to infringe. If the government can do the thing which is attempted by this Resolution, then, we respectfully urge that whatever may be its form, it is no longer in truth a constitutional government.

The Principles Declared in Bronson v. Rodes and the Cases Reaffirming It Have Become a Rule of Property.

Bronson v. Rodes was decided in 1868—two-thirds of a century ago. As we have shown, it established definitely certain principles. Among them were:

> "It is the appropriate function of courts of justice to enforce contracts according to the lawful intent and understanding of the parties". (Page 245.)
>
> "It is not to be doubted, then, that it was to guard against the possibility of loss to the estate, through an attempt to force the acceptance of a fluctuating and perhaps irredeemable currency in payment, that the express stipulation for payment in gold and silver coin was put into the bond. * * * The terms of the contract must have been selected, therefore, to fix definitely the contract between the parties, and to guard against any possible claim that payment, in the ordinary currency, ought to be accepted.
>
> The intent of the parties is, therefore, clear. Whatever might be the forms or the fluctuations of the note currency, this contract was not to be affected by them." (Page 246.)
>
> "A contract to pay a certain number of dollars in gold or silver coins is, therefore, in legal import, nothing else than an agreement to deliver a certain weight of standard gold, to be ascertained by a count of coins, each of which is certified to contain a definite proportion of that weight. It is not distinguishable, as we think, in principle, from a contract to deliver an equal weight of bullion of equal fineness". (Page 250.)

> "Can judicial sanction be given to the proposition that the government may discharge its obligation to the depositors of bullion by tendering them a number of note dollars equal to the number of gold or silver dollars which it has contracted by law to pay?" (Page 253.)

These principles, as has been shown, have been reaffirmed by this court during the intervening years. We respectfully urge that these rules have become rules of property upon which citizens had a right to rely and did rely in their transactions. It would be difficult to estimate the number of hundreds of millions of dollars of the savings of the citizens of this country which have been invested in reliance upon these established rules of law. They have become, by operation of law, a part of innumerable and most important contracts. Among these are the contracts involved in the case at bar. The citizens who invested their money in these bonds did so in reliance upon these established rules. To hold now that these rules shall be overturned, to tell the citizens who have relied upon them that their reliance was unjustified and that the rights which vested thereby were and are subject to being divested at the pleasure of the legislative arm of the government, would be violative of what we conceive to be fundamental and essential principles. Moreover, it would inevitably destroy that confidence in the protection of property and contract rights which is essential to economic stability and indeed to the continuance of our type of civilization.

The principle that where a rule of decision has stood through many years and has been acted and relied upon by the public it will not thereafter be disturbed, is so basic as hardly to require citation of authorities. It is well stated by this court in *Wallace v. McConnell,* 13 Peters 135, at 149, as follows:

> "After such a uniform course of decisions, for at least thirty years, it would be inexpedient to change the rule, even if the grounds upon which it was originally established might be questionable; which, however, we do not mean to intimate. It is of the utmost importance, that all rules relating to commercial law should be stable and uniform. They are adopted for practical purposes, to regulate the course of business in commercial transactions; and the rule here established is well calculated for the convenience and safety of all parties."

In *U. S. v. Flannery,* 268 U. S. 98 at 105, this court said:

> "Decisions affecting the business interests of the country should not be disturbed except for the most cogent reasons".

See also:

National Bank v. Whitney, 103 U. S. 99, at 102;

Minnesota Co. v. National Co., 3 Wallace 332, at 334;

United States v. Title Ins. Co., 265 U. S. 472, at 486.

The state courts have consistently recognized that the rules announced in *Bronson v. Rodes* have become the settled law of the land. For example:

Belford v. Woodward, 158 Ill. 140; 41 N. E. 1099;

B. etc. RR. v. State, 36 Md. 541;

Jones v. Childs, 8 Nev. 126;

Hittson v. Davenport, 4 Colo. 169;

Whitaker v. Dye, 56 Ga. 380;

McGoon v. Shirk, 54 Ill. 408; 5 Am. Rep. 122;

Churchman v. Martin, 54 Ind. 380;

Phillips v. Dugan, 21 Ohio St. 66; 8 Am. Rep. 69;

Walkup v. Houston, 65 N. C. 501;

Rankin v. Demott, 61 Pa. 263.

Numerous other authorities to like effect are collected in a Note in 29 L. R. A., pages 518, *et seq.*

Our View Does Not Increase One Iota the Amount of the Obligation Which the Debtor Must Pay.

It is argued, in effect, that the court ought to sustain the constitutionality of the Resolution because if it did not do so, the practical effect would be to increase the obligation of debtors and that this would be burdensome to them. We submit that this argument is clearly fallacious. The view we are urging does not increase one iota the obligation of any debtor. It is still what it always was, namely, an obligation to pay a certain amount of gold coin, or, if paid in some other medium, its equivalent value. The opposing view would destroy the obligation to the extent of 40 per cent.

In answering a similar argument, the Permanent Court, in the *Brazilian Loan Case,* at page 117, said:

> "The devalorisation of the French franc could not in fact increase the obligations of the latter (that is, the borrower): the gold clause merely prevents the borrower from availing itself of a possibility of discharge of the debt in depreciated currency".

This is strikingly similar to the statement of this court in *Bronson v. Rodes,* 7 Wallace, at 246:

> "The terms of the contract must have been selected, therefore, to fix definitely the contract between the parties, and to guard against any possible claim that payment, in the ordinary currency, ought to be accepted.
>
> The intent of the parties is, therefore, clear. Whatever might be the forms or the fluctuations of the note currency, this contract was not to be affected by them."

The unsoundness of the opposing argument may, perhaps, be pointed out by simple illustration. Suppose A borrows from B one thousand bushels of wheat of 60 pounds each and agrees that one year hence he will repay one thousand bushels of the same weight. Before payment falls due, competent legislative authority provides that a bushel shall be not 60 pounds but 30 pounds. If, when repayment falls due, A attempts to repay one thousand bushels of 30 pounds each, every one would see that he had not repaid what he had agreed to repay. It would be obvious that if he repaid in the new 30 pound bushels he would have to pay, not one thousand, but two thousand, of such bushels in order to perform his obligation. But

it would likewise be obvious that in repaying two thousand of the new bushels his obligation would not have been increased one iota, nor would he have paid any more than he agreed to pay.

So here, the obligation always was and is today to repay a certain measure of value. The unit of value in which he makes repayment is smaller than the unit in which the obligation is measured. Therefore, a proportionately larger number of such units must be paid in order to meet the obligation. This in nowise increases the measure or extent of the obligation. But, to do as our opponents urge, and permit the obligation to be paid by delivery of the same number of units, each unit being of 40 per cent less value than the unit in which the obligation is measured, would be to reduce the obligation by a like percentage and to destroy the property right of the creditor in the same proportion.

Let us again illustrate the point by assuming a situation the converse of the present Resolution. Suppose that instead of *decreasing* the value of the unit, the Congress had *increased* it by 40 per cent. Suppose it then passed a resolution that all obligations payable specifically by their terms in a certain number of the former unit of value, must be discharged by paying the *same number* of the new dollars, each one of which is 40 per cent more valuable than the unit in which the measure of the obligation was fixed. Would any one, for a moment, question the fact that the effect of this would be to increase the obligation of the debtor and to take his property for the benefit of the creditor? If the Congress has the power to do what has been attempted here, then it has the power to do what has just been suggested. One is simply the

converse of the other. If it should attempt to do this, we fail to see how any one could seriously question that it would be an attempt to impair the obligation of the contract and to spoliate the debtor for the benefit of the creditor. The present Resolution is equally an attempt to impair the obligation of the contract and to spoliate the creditor for the benefit of the debtor.

Dire prophecies are indulged as to the serious practical effects which, it is assumed, will result if the court fails to sustain the constitutionality of the Resolution. Such phophecies seem to be mere assumptions. It seems far more reasonable and more in accordance with probabilities to engage in prophecies as to the dire results that will follow if the principle should be established that the Congress may impair vested obligations of contracts; if it may confiscate property; if it may spoliate one citizen of part of his property and bestow that property upon another.

Our civilization is largely built upon the cornerstone that lawful contracts impose real obligations, enforceable by the courts; that property lawfully acquired and held is protected by the Constitution; that our government is prohibited by the fundamental law of the land from spoliating one citizen or one class of citizens and conferring the property thus confiscated upon a favored citizen or class of citizens. Withdraw this keystone of the arch and the arch may no longer stand. Tear away this cornerstone of the Temple and the Temple may come tumbling about our heads. It has been our proud boast that this is a government of laws and not of men; that within our government there is no room for the exercise of arbitrary or despotic power; that in this land all men are equal

before the law. These boasts have always been true and upon this truth has been builded the structure of our civilization. If the government may do what is here attempted; if it may spoliate one class for the benefit of another class, then the boast is no longer true. The Temple will no longer be builded upon the solid rock but will be a house builded upon the sands. There is high authority, as well as the universal experience of mankind, to demonstrate the truth of the rule that a house builded upon the sands cannot stand.

Moreover, the prophecies of great evil which will follow unless this court shall disregard what we conceive to be fundamental constitutional principles, is refuted by the practical experience of those countries wherein it has been held that reduction in the unit of value does not relieve debtors from performing the measure of their obligations. For example; since the decision of the House of Lords in the *Feist Case* in 1933, this has been the law of the British Empire. The dire consequences which our opponents prophecy have not followed in that Empire. On the contrary, it is well known that at least as great and probably substantially greater progress has been made toward economic recovery and stability than has been made in our land.

The real question in this case is simply one of the constitutional power of Congress to pass the Resolution in question. The argument that Congress does have the power, because if the Resolution is held unconstitutional serious consequences to some debtors may result, seems to us, with all deference, to be in essence nothing but an *ad hominem* appeal. The supposed dire results are assumed. Experience in other countries seems

to justify the statement that they are assumed without any proper foundation. But even if they were known to be true, we fail to see how this could affect the question of the constitutional power of Congress.

Moreover, the argument proves far too much. If the argument be sound that Congress may pass this Resolution because, forsooth, it may impose hardship on debtors to be compelled to pay their debts in full, then why would not the same argument justify the Congress in passing a Resolution relieving all debtors of 40 per cent of their obligations? No doubt this would relieve debtors of some embarrassment. If the Congress may relieve debtors of 40 per cent of their obligations, why not 50 per cent or 75 per cent or 100 per cent? This would relieve debtors of more embarrassment. Will any one contend that the Congress may relieve debtors of 100 per cent or 50 per cent or 40 per cent or 1 per cent of their obligations? We assume not. If not, how can it be argued that the assumed premise that it will be difficult for debtors to pay the full measure of their obligations in the present lawful money, sustains the constitutional power of Congress to pass the Resolution in question?

As a matter of fact, the Resolution, at least in this respect, is nothing more nor less than a Resolution cancelling 40 per cent of a certain class of existing contractual obligations. We doubt if ever in modern history has there been so striking and extreme an attempt by any Government to release debts. The Resolution might, with accuracy, bear the title:

"A RESOLUTION TO RELIEVE A CERTAIN CLASS OF DEBTORS, INCLUDING THE UNITED STATES, OF FORTY PER CENT OF THEIR OBLIGATIONS."

If we may indulge in prophecies as to what practical results are likely to flow from a decision one way or the other on this question, we venture the suggestion that if it should be held that Congress had the power to enact this Resolution, it is not at all unlikely that the next step will be an attempt to secure a law cancelling, in part at least, *all* debts and obligations.

The argument we are analyzing seems predicated on the fact that we are in a period of economic depression and that it is difficult for creditors to meet their obligations in full. As bearing upon the question whether Congress has the constitutional power to pass this Resolution, let us suggest another illustration: If an assumed hardship on debtors through requiring them to perform their contracts, or an assumed general welfare in relieving debtors of their obligations, in this period of economic depression, can justify this action by Congress, then would it not be equally true that a converse state of facts would justify a converse application of the same assumed power? Suppose that at some future time this country shall enjoy a period of great economic prosperity such as it had in 1927. Suppose the Congress shall conclude that there is too much business activity, or too much "speculation", and shall decide that the general welfare will be promoted by providing that obligations of debtors shall be

increased 40 per cent, and shall pass a law so providing. This may seem a violent assumption of fact and yet strange things happen. The question, however, is not one of probability but one of power. If the Congress has the assumed power to *release* debts to the extent of 40 per cent, we fail to see how it can be denied that by the same token it has the power to *increase* them by like amount. Would any one contend that such a power exists?

The Resolution of June 5 Cannot Be Justified Under the Power of Congress to Coin Money and Regulate the Value Thereof.

The power granted by the Constitution is to coin money and regulate the value thereof. It is not a power to repudiate the contractual obligations of the Government or to impair the obligation of contracts between private citizens or to spoliate one citizen of his property and confer it upon another citizen.

The Resolution, we submit, has nothing to do with regulating the value of money. That power was exercised by the Congress in the Act of May 12, 1933 and the President's Proclamation of January 31, 1934, by which the value of the gold dollar was reduced from 25.8 grains of gold to 15-5/21st grains, and by which all other forms of money were made equal in value. [48 Stat. 51 b 2.]

The statute in force when these obligations were contracted, and indeed since March, 1900, reads as follows:

> "The dollar consisting of twenty-five and eight-tenths grains of gold nine-tenths fine shall be the

standard unit of value, and all forms of money issued or coined by the United States shall be maintained at a parity of value with this standard, and it shall be the duty of the Secretary of the Treasury to maintain such parity. (R. S. §3511; 31 Stat. 45.)"

The Act of May 12, 1933, above referred to, Section (b) (2) authorizes the President, as follows:

"(2) By proclamation to fix the weight of the gold dollar in grains nine-tenths fine, and also to fix the weight of the silver dollar in grains nine-tenths fine at a definite fixed ratio in relation to the gold dollar at such amounts as he finds necessary from his investigation to stabilize domestic prices or to protect the foreign commerce against the adverse effect of depreciated foreign currencies, and to provide for the unlimited coinage of such gold and silver at the ratio so fixed, or in case the Government of the United States enters into an agreement with any government or governments under the terms of which the ratio between the value of gold and other currency issued by the United States and by any such government or governments is established, the President may fix the weight of the gold dollar in accordance with the ratio so agreed upon, and such gold dollar, the weight of which is so fixed, shall be the standard unit of value, and all forms of money issued or coined by the United States shall be maintained at a parity with this standard and it shall be the duty of the Secretary of the Treasury to maintain such parity, but in no event shall the weight of the gold dollar be fixed so as to reduce its present weight by more than 50 per centum. (May 12, 1933, c. 25, Title III, §43, 48 Stat. 51, as amended June 5, 1933, c. 48, §2, 48 Stat. 113.)"

By his proclamation of January 31, 1934, the President did fix the weight of the dollar at 15-5/21st grains of gold nine-tenths fine.

This Resolution seeks to compel one class of citizens (namely, creditors holding obligations the measure of which is fixed by gold) to accept money at a *greater* value than the legal value so fixed. The creditor is willing to accept lawful money in payment and accept it at the very value Congress has fixed. Our opponents, including the Government, are in the strange position of insisting that although Congress has fixed the value of money at 40 per cent less than it formerly was, this class of creditors must, nevertheless, accept it at the old value and not at what is now the legal value. This seems to present an inherent contradiction. Lawful money has but one legal value. *Deutsche Bank v. Humphrey,* 272 U. S. 517, 519. Every one concedes that the Congress has the power to fix the value of money and that it has fixed it. The creditor stands ready to accept that money at the very valuation fixed by law. But we respectfully insist that no one, not even the Congress, can lawfully compel any citizen to accept that money at a greater value than the value which the Congress has fixed. That is exactly what the Resolution, if valid, would do. The creditor has an obligation measured by the value of gold. The law has fixed the value of the dollar at the equivalent of 15-5/21st grains of gold. The resolution, if valid, would compel the creditor to accept the dollar at a value of 25.8 grains of gold. We respectfully insist that the very fact that Congress has the power to regulate the value of money, and has regulated it, demonstrates that the Resolution cannot be valid. The very power under which it is sought to sustain

the validity of the Resolution itself demonstrates that it is unconstitutional.

Let us again use a simple illustration similar to the one heretofore given. There is no question that competent legislative authority can fix the standard of weight and measures, just as it can fix the value of money. Suppose that when a legal bushel of wheat is 60 pounds I borrow one thousand such bushels and agree that one year hence I will repay one thousand bushels of the same weight. Before time of payment arrives competent legislative authority provides that a bushel shall be 30 pounds. Would any one contend that because the legislative authority has the unquestioned right to fix the standard of weights and measures, it can also require me to accept, as full payment, one thousand bushels each containing 30 pounds, when the measure of the obligation is to repay one thousand bushels each containing 60 pounds? Obviously not. To do this would be, not to fix the standard of weights and measures, but an entirely different thing—to impair the obligation of the contract and to spoliate me of one-half of my property right in the contract.

Many similar illustrations readily suggest themselves. Congress undoubtedly has power to provide how many ounces shall constitute a pound. Suppose that when by law sixteen ounces constitutes a pound, A buys from B ten thousand pounds of valuable commodity and pays for it, and B agrees to deliver such ten thousand pounds "of or equal to the present standard of weight" at a specified future date. Before the time of delivery arrives, the Congress provides that ten ounces shall constitute a pound. Would any one contend for a moment that because Congress may validly regulate the matter of

weights it may also provide that B may fully perform his obligation to A by paying him ten thousand pounds of ten ounces each, when the obligation of the contract of the parties was and the thing for which A paid was ten thousand pounds of the then standard which was sixteen ounces? Clearly not.

The Congress may provide what shall constitute a lawful yard. Suppose a case similar to the previous illustration, except that A has bought and paid for ten thousand yards of some valuable commodity, say silk, when the lawful yard is thirty-six inches, and B has agreed to deliver to him at some specified date in the future ten thousand yards "of the present standard of measure". Before performance is due, Congress provides that a yard shall be twenty inches. Would any one contend that the Congress may constitutionally require A to accept in full satisfaction ten thousand yards of twenty inches and that B's obligation is fully discharged by the delivery of that quantity, when the thing for which A paid and the contract of the parties and the obligation of the contract expressly was that B should deliver ten thousand yards of thirty-six inches each? We cannot bring ourselves to believe that any one would urge such an argument.

The reason is that the things attempted by the two supposed actions of Congress are different things. The power to regulate the value of money or to fix the standard of weight or the standard of measure is an entirely different thing from the assumed power to change the contract of the parties and so impair its obligation and destroy the property right of one party for the benefit of the other. The Constitution has granted Congress the first power. As to the second power, not only has the

Constitution failed to grant it, but by the Fifth Amendment it has expressly prohibited it.

The principle involved here seems identical. The Congress may unquestionably regulate the value of money. It may probably require every citizen to accept the money at the value so fixed. If citizens have made a contract payable in money "*simply*", without specifying any particular kind of money or standard of value, the new money will satisfy it dollar for dollar, because that is their contract and the obligation of the contract. But, we submit, it is clear that Congress cannot compel any citizen to accept that money at a value 60 per cent higher than the value which it has so fixed, nor can it compel the debtor to pay 40% more than a *specific* measure of value, measured by something other than mere money, which he has agreed to pay or the creditor to accept 40% less than the specific measure of value which the contract provides he is entitled to receive. We submit that the attempt to do this is not regulating the value of money at all and cannot be justified under that power.

The Resolution attempts to destroy the fundamental difference between two types of obligation, namely: those payable simply in money or legal tender on the one hand, and those in which the amount of the obligation is measured by some other standard, such as the value of gold, on the other hand. The obligation of these two contracts is different. The difference is fundamental. The first is simply an obligation to pay the specified number of dollars in whatever at the time of payment is legal tender. This is exactly what the parties have agreed, and hence is the measure of the obligation. The latter obligation, however, is specifically designed by the parties to avoid this effect.

The very purpose as well as the legal effect of the so-called Gold Clause in the obligation is to measure the obligation by a fixed standard and a different standard than mere legal tender. Its purpose and legal effect is to fix the measure of the obligation such that it can be discharged only by paying the particular coin specified or such amount of legal tender as will have a value equivalent to the standard of value which is the measure of the obligation. Since the obligations of the two contracts are different, a law which attempts to make them the same seems clearly to impair the obligation of one.

It is no doubt true that an agreement simply to pay $1,000.00 at some time in the future can be discharged by payment of whatever, at that time, the Congress has declared to be legal tender for $1,000.00. This is what the parties have agreed: the obligation is simply to pay that sum in whatever is then lawful legal tender. This, then, is the obligation of the contract. But it seems obvious that when the parties agree that the measure of the obligation shall be $1,000.00 in gold coin of the United States of America of or equal to the standard of weight and fineness provided by law at the time the obligation is entered into, their intention and agreement and the legal obligation of the contract is that it shall not be payable by delivery of one thousand pieces of paper or anything else simply because the Congress may declare them to be legal tender for one dollar. The intention and legal obligation of this agreement is the exact opposite. It is that if the obligation is paid in currency or other legal tender, there must be paid such amount of currency or legal tender as will equal in value the amount of gold specified in the contract. This is the obligation of the contract, and the property right of the creditor.

This court has consistently recognized and frequently pointed out the fundamental difference between these two types of obligation.

It was fully recognized in *Bronson v. Rodes, supra.*

The very cases strongly relied upon by our opponents in support of their position, namely, the *Legal Tender Cases*, 12 Wallace 457, expressly recognize this basic distinction between the two classes of obligations, and hold that the decision there rendered with regard to obligations payable in money, as such, *have no application* to obligations payable in a particular kind of coin. At page 548, the court, in considering the effect of the Legal Tender acts and in determining to what form of contracts they can constitutionally apply, says:

> "But whether the obligation of the contract is thereby weakened can be determined only after considering what was the contract obligation. It was not a duty to pay gold or silver, or the kind of money recognized by law at the time when the contract was made, nor was it a duty to pay money of equal intrinsic value in the market. (We speak now of contracts to pay money generally, not contracts to pay some specifically defined species of money.) The expectation of the creditor and the anticipation of the debtor may have been that the contract would be discharged by the payment of coined metals, but neither the expectation of one party to the contract respecting its fruits, nor the anticipation of the other constitutes its obligation. There is a well-recognized distinction between the expectation of the parties to a contract and the duty imposed by it."

On page 549, the court says:

> "Every contract for the payment of money, simply, is necessarily subject to the constitutional power of the government over the currency, whatever that power may be, and the obligation of the parties is therefore, assumed with reference to that power."

Here again the court points out that it is only contracts where the obligation is merely an obligation to pay in whatever is money—as the court says "for the payment of money, *simply*",—that have this effect. The fact that the court in these cases expressly points out that it is necessary to determine what kind of an obligation the contract creates, and that it is only those contracts which are payable in money simply as money and "not contracts to pay some specifically defined species of money" that are subject to the power of Congress to make anything legal tender, is not only a direct recognition of the fundamental difference between these two types of contracts, but makes these cases a direct authority in support of our position and opposed to the position of our opponents.

This is further confirmed by the fact that just one week after decision of the *Legal Tender Cases* this court handed down its decisions in *Trebilcock v. Wilson*, 12 Wallace 687, in which it reaffirmed *Bronson v. Rodes* and reversed a judgment in which it had been decreed that tender of currency discharged an obligation which was, by its terms, payable in specie. At page 695, the court pointed out that a contract which is, by its terms, payable in specie, means that it is not payable in currency; that the terms "in specie"

> "are the opposite of the terms, *in currency*, which are used when it is desired to make a note payable in paper money. These latter terms, *in currency*, mean

that the designated number of dollars is payable in an equal number of notes which are current in the community as dollars.

"This being the meaning of the terms *in specie*, the case is brought directly within the decision of *Bronson v. Rodes*, where it was held that express contracts, payable in gold or silver dollars, could only be satisfied by the payment of coined dollars, and could not be discharged by notes of the United States declared to be a legal tender in payment of debts."

The same thing is further confirmed by *Gregory v. Morris*, 96 U. S. 619, decided some five years later, in which this court again affirmed *Bronson v. Rodes* and held that in rendering a judgment based on a contract providing for the payment of gold, if it was made payable in currency,

"the judgment should be for an amount which would be the equivalent in currency of the specified amount of coin as bullion."

In the course of its opinion (page 625) the court said:

"If the contract had been in terms for the delivery of so much gold bullion, there is no doubt but the court might have directed the jury to find the value of the bullion in currency, and bring in a verdict accordingly. But we think, as was thought in *Bronson v. Rodes*, such a case is not really distinguishable from this."

In *Juilliard v. Greenman*, 110 U. S. 421, while this court laid down in strong terms the power of Congress to make treasury notes of the United States legal tender in the payment of ordinary debts payable in money solely, it

distinctly recognized the distinction between obligations of this character and obligations which are payable in a specific kind of money. In summing up its opinion, on page 449, the court said:

> "A contract to pay a certain sum of money, without any stipulation as to the kind of money in which it shall be paid, may always be satisfied by payment of that sum in any currency which is lawful money at the place and time at which payment is to be made."

The court then quoted the statement from the *Legal Tender Cases*, which we have heretofore quoted to the effect that every contract for the payment of "money, *simply*", is subject to the power of the government over the currency.

In *Deutsche Bank v. Humphrey*, 272 U. S. 517, this court had before it the converse of the situation presented by the present case. There an obligation was expressed as being a certain number of German marks. Judgment was rendered in a number of dollars reached by translating the marks into an equivalent value in dollars at the rate of exchange existing when the demand was made. Thereafter the value of the mark in terms of dollars fell. The dollar became more valuable instead of less valuable as in the case now before the court. This court held that the true rule is that the obligation was to pay in marks alone and was open to satisfaction by the payment of that number of marks, however much the mark might have fallen in value, and so reversed the judgment. While four of the Justices dissented, that dissent was based upon a difference of opinion as to *when* the loss should be measured, taking the position that it should be measured as of the value of the mark at the time the breach occurred,

rather than the date of the judgment. Whichever time be adopted as the proper time to apply, all the Justices agreed that the judgment was to be fixed by translating the number of marks into a number of dollars which at that time had an equivalent value.

Hence, we repeat: Suppose that instead of exercising its power to regulate the value of money by *reducing* the value of the dollar, Congress should *increase* its value, and then seek to provide that all obligations which by their express terms were payable in dollars of the legal standard of weight and fineness when the contract was made, must now be paid by delivering the same number of dollars of the new and increased value. Could any one seriously deny that this would substantially change the contract of the parties, impair the obligation of the contract, and increase the obligation of the debtor above that which the contract imposed upon him? We think not. Just as clearly, we submit, does the Resolution now in question have the converse effect of impairing the obligation of the contract and decreasing, and *pro tanto* destroying, the property rights of the creditor.

Thus it seems clear that as a matter of law, there is a basic difference between the obligation of a gold clause contract such as is here involved, and the obligation of a contract under which a certain sum of money simply as money is payable. If this is true, then it would seem beyond dispute that the Resolution impairs the obligation of the contract and takes property without due process of

law. It attempts to change the contract. It attempts to make the obligation of the gold clause contract *the same* as the obligation of a simple money contract. In other words, it would, if valid, make a new contract for the parties in which the rights of one party and the obligation of the other would be substantially different from the contract which they actually made. We submit it is not within the power of Congress thus to alter the obligations of contracts between private persons.

Whatever Power the Government May Have Over Gold, Either Coined Gold or Gold as a Commodity, Is Immaterial in This Case.

Arguments have been advanced in the lower courts to the effect that because it is assumed that the Government has power to control all gold in this country and to prevent citizens from owning or holding gold, thereby, for some reason, the Resolution here in question is valid. We submit there is no merit in any such argument. So far as the validity of this Resolution is concerned, the power which the Government may or may not have over gold, whether coined or in the form of bullion, is utterly immaterial. No one is here seeking payment in gold, either as coin or bullion. Every one acknowledges that payment of the obligations involved may be made in currency. The only question is, *how much* currency must be paid to discharge the obligation? We respectfully urge that such amount must be paid as will equal in value the measure

of the obligation of the contract. The Resolution question seeks to provide that the obligation may be discharged by the payment of an amount of currency or other legal tender which equals in value only 60 per cent of the measure of the obligation. The validity of this feature of the Resolution is the question before the court. It seems obvious that this in no wise depends on the question of what power the Federal Government may have over gold and in nowise requires any determination of that question.

We respectfully urge that the releasing of debtors of a part of their contract obligations to other citizens is not within the legitimate scope of the powers of the Federal Government, and that the present attempt of the Congress to release and discharge 40 per cent of one class of such obligations violates the Constitution of the United States.

Conclusion.

Seldom has a case been presented even to this court, the decision of which will involve such vast consequences. The financial amounts involved are enormous. But infinitely more important even than these, as we view the case, are the consequences which would result to our entire structure of constitutional government if it should be held that the Congress has the power to do the things which are attempted by this Resolution. Without wishing to use language that could be deemed intemperate, we have endeavored to point out a few of the practical consequences which might result, and certain types of action that this same power would justify, which we conceive are repugnant to the fundamental concepts upon which our

government, or indeed any constitutional government, must rest.

It is respectfully submitted that the so-called Gold Clause is valid; that it fixes and measures the obligations of the parties and constitutes the obligation of the contract; that the Joint Resolution of June 5, 1933, attempts to change in a substantial degree the obligation of the contract and impairs the obligation of the contract; that it is an attempt to release and discharge, *pro tanto*, valid obligations; that it attempts to take, without hearing or compensation, the property of one citizen and confer it upon another; that it violates not only the fundamental concept underlying our entire system of government, but also violates the express provisions of the Fifth Amendment to the Constitution, and Section 4 of the Fourteenth Amendment; that the Resolution is unconstitutional and void.

All of which is respectfully submitted.

H. W. O'MELVENY,
WALTER K. TULLER,
LOUIS W. MYERS,
As Amici Curiae.

Due service of the within brief is hereby acknowledged this.....day of December, A. D. 1934.

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In the

SUPREME COURT OF THE UNITED STATES.

October Term, 1934.

Nos. 471 and 472.

UNITED STATES OF AMERICA et al.,
Petitioners,

against

BANKERS TRUST COMPANY and WILLIAM H. BIXBY, Trustees,
Respondents.

No. 531.

F. EUGENE NORTZ

against

UNITED STATES OF AMERICA.

No. 532.

JOHN M. PERRY

against

UNITED STATES OF AMERICA.

STATEMENT, BRIEF AND ARGUMENT OF AMICUS CURIAE.

PAUL BAKEWELL, JR.,
Amicus Curiae.

ST. LOUIS LAW PRINTING CO., 415 North Eighth Street. CEntral 4477.

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STATEMENT, BRIEF AND ARGUMENT OF AMICUS CURIAE

STATEMENT.

The Statute of the United States provided:

> "The dollar consisting of twenty-five and eight-tenths grains of gold nine-tenths fine shall be the standard unit of value, and all forms of money issued or coined by the United States shall be maintained at a parity of value with this standard, and it shall be the duty of the Secretary of the Treasury to maintain such parity."
>
> Act of March 14, 1900, 31 Stat. L. 45.

While that Statute was in force, various parties loaned to others gold dollars which answered to that statutory description, or currency dollars which, at the time, were the *equivalent* of such gold dollars.

Such written obligations of the debtors contained in substance or in effect the following provision:

> "The undersigned promises to pay One Thousand Dollars in gold coin of the United States of America of or equal to the standard of weight and fineness fixed by the Statute now in effect."

1. Thereafter, pursuant to the act of March 9, 1933 (Public Law No. 1, 73rd Congress), the Federal Government, under an emergency power, took possession of all gold coin, bullion and gold certificates. The Government paid for such gold in currency dollars, each of which, *at that time*, represented 25 8/10 grains of gold. Payment was at the rate of one of such currency dollars for each 25 8/10 grains of gold which had been taken.

2. On June 5, 1933, Congress passed a Joint Resolution (Public Resolution No. 10, 73rd Congress), the stated purpose of which was:

> "To assure uniform value to the coins and currencies of the United States."

That resolution declared (inter alia):

> a) That all provisions and obligations which required payment in gold were against public policy.
>
> b) That every such obligation, *heretofore* or hereafter incurred, should be *discharged* upon payment "*dollar for dollar*" in any coin or currency which at the time of payment was legal tender for public and private debts.
>
> c) That all coins and currencies of the United States theretofore or *thereafter* issued should be legal tender for all debts.
>
> (Note that on June 5, 1933, when that resolution was adopted, the dollar was defined by statute as the unit of value of the United States, and, as defined by statute, the dollar consisted of 25.8 grains of gold.)

3. On January 31, 1934, the statutory definition of a dollar was changed, and from and after that date, the gold content—the essence of a dollar, was 15 5/21 grains of gold. This change in the essence,—the gold content, and, therefore, the statutory definition—, of a dollar, was made by presidential proclamation under authority theretofore granted by Congress.

> (The stated purpose for the exercise of that authority was to "stabilize domestic prices and to

protect the foreign commerce against the adverse effect of depreciated foreign currencies."

Proclamation of Jan. 31, 1934, U. S. C. A., pp. 589 and 590.)

When the Federal Government took possession of all gold, that act made it impossible for debtors to fulfill their obligations by payment in gold.

It was therefore necessary to provide a medium by which such obligations might be settled.

By the Joint Resolution of June 5, 1933, Congress provided such a medium by making all coins and currencies legal tender "dollar for dollar" in settlement of all debts.

As the dollar consisting of 25.8 grains of gold was the statutory unit of value, and as each currency dollar was *at the time* the *equivalent of* and representative of that specific gold dollar, it is clear that under those facts alone no question could arise concerning the amount which was to be paid under such obligations, nor concerning the number of currency dollars which would be necessary to discharge such obligations.

However, after January 31, 1934, on which date *the essence, the gold content, and, therefore, the statutory definition*, of the dollar was changed, various debtors contended that under the laws as they now exist, obligations of the kind and character hereinbefore described might be fully discharged by payment in a number of currency dollars equal to the number of dollars specified in such respective obligations, *notwithstanding the fact that the new unit of value, defined as a dollar, had been reduced in its essence, to-wit, its gold content, and therefore was not equal*

to the standard of weight of the dollar which was specified in the obligations.

Those facts and circumstances, and that assertion by various debtors, present the following

ISSUE ON THE MERITS.

What number of currency dollars, each of which is the *equivalent* of and represents only 15 5/21 grains of gold, must be paid by a debtor to discharge an obligation executed by him, which evidenced a promise to pay a specified number of dollars, each of which consisted of or was the equivalent of and represented 25.8 grains of gold?

The determination of that issue depends not alone upon elementary law and the most fundamental principles of Justice. Because various acts of Congress which were enacted *at different times and for different purposes, when read together,* make it appear that, under the authority of law, an obligation may be discharged by payment of less than the amount specified therein, the determination of that issue depends upon questions of substantive law, some of which involve the powers of Congress and of the Federal Government under the Constitution of the United States.

QUESTIONS OF LAW.

1. Was the law in force, at the time the obligations were entered into, part of the obligation of the contract?

2. Has Congress power to declare what *amount* shall discharge an obligation?

3. If the result of reading two or more acts of Con-

gress together, or if the *combined* effect of two or more acts of Congress, be to deprive a person of his property without due process of law, is such a result a valid and legitimate result within the powers of the Federal Congress?

4. Has Congress power to impair the obligation of a legitimate contract by legislation which, on its face, not only changes the medium by which the obligation was to be fulfilled, but which also *reduces* the *amount* necessary to discharge such obligation below the amount specified therein?

POINTS AND AUTHORITIES.

1. The law in effect at the time the obligation was entered into constitutes the obligation of the contract.

Hoffman vs. Quincy, 4 Wallace 550;
Edwards vs. Kearzey, 96 U. S. 601;
Lynch vs. U. S., 292 U. S. 571, l. c. 577.

2. If gold were obtainable, then, under the contracts before the Court, the debtors would be entitled to enforce the provisions thereof and require payment in gold.

Bronson vs. Rodes, 7 Wallace 229.

3. When the Government (the Sovereign) made it impossible to obtain gold, then, under elementary principles of law and fundamental principles of Justice, the debtors are entitled to receive an amount in currency which is the *equivalent of* (and actually represents,) the *amount of gold specified in the obligation.*

Gregory vs. Morris, 96 U. S. 619, l. c. 625;
Butler vs. Horwitz, 7 Wallace 258, l. c. 261;
Trebilcock vs. Wilson, 12 Wallace 687, l. c. 695;
Feist vs. Societe Intercommunale Belge D'Electricite, decided by the House of Lords in England on Dec. 15, 1933;

The Serbian case;

The Brazilian case,

Decided by the Permanent Court of International Justice June 15, 1929; Publications of that Court, Series E, No. 5, p. 205 and p. 216.

4. Congress is without power to specify what *amount* shall discharge an obligation. That is a judicial function.

Rood vs. Heartt, 21 Wallace 558;
Den vs. Hoboken Land Co., 18 Howard 272;
Kilbourn v. Thompson, 13 Otto 168, l. c. 193.

5. Rights arising out of contracts are protected by the Fifth Amendment. Therefore, if such rights be destroyed or decreased as a result of the combined effect of two or more acts of Congress, such a result is beyond the powers of Congress and is, therefore, invalid.

Lynch vs. United States, 292 U. S. 571.

6. Congress is without power to impair the obligation of a legitimate contract.

Lynch vs. United States, 292 U. S. 571;
Murray vs. Charleston, 96 U. S. 449;
Osborn vs. Nicholson, 13 Wallace 654;
Hepburn vs. Griswold, 8 Wallace 603, l. c. 623.

7. Congress itself has recognized fundamental principles of Justice which should apply and has also recognized the equities which arise as a result of reducing the gold content of the unit of value—the dollar.

Act of Congress authorizing the Treasurer of the United States to credit the Government of the Philippine Islands with $23,862,750.78, being the amount equal to the increase in value in the deposits of the Philippine Islands based upon the reduced gold content of the dollar.

Session Laws.
Statutes of the United States of America, 73rd Congress, p. 1115.

ARGUMENT.

This Court has uniformly held that the obligation of a contract is the law which binds the parties to perform their agreement; the law in force *at the time the contract is made* and which enters into and becomes a part of the contract.

Decisions cited under Point I.

When gold was obtainable, this Court decided that a debtor had the right to enforce the provision of an obligation which required payment in gold.

Bronson vs. Rodes, 7 Wallace 229.

That decision has never been reversed or overruled. It has been followed frequently and is still the law applicable to a time when gold is obtainable.

The Legal Tender cases did not weaken or in any manner affect the force of the decision of this Court as rendered in Bronson vs. Rodes, supra.

In effect, the Legal Tender cases reaffirmed the decision in Bronson vs. Rodes. In Knox vs. Lee, the leading Legal Tender case, the majority opinion of this Court *limited* the effect of the legal tender decisions to *contracts* which were *payable only in "money."*

The Court said:

> "We speak now of contracts to pay money generally. Not contracts to pay some specifically defined species of money."
>
> Knox vs. Lee, 12 Wallace, l. c. 548.

When, under contracts which called for payment in gold, currency was offered in lieu thereof, this Court has repeatedly stated that the amount of such currency must be *equivalent* in value to the specified amount of gold coin considered as a commodity.

Gregory vs. Morris, 96 U. S., l. c. 625;
Butler vs. Horwitz, 7 Wallace, l. c. 261;
Trebilcock vs. Wilson, 12 Wall., l. c. 695.

Such decisions were rendered upon elementary principles of law and fundamental principles of Justice upon which the social contract is based.

Two other courts of the greatest dignity, in deciding the particular issue now before this Court, have applied only elementary principles applicable to the interpretation of contracts, and the plainest principles of abstract justice, and in doing so, each has reached the same conclusion, to-wit, that the creditor is entitled to receive, and the debtor may be compelled to pay, such an amount in currency *as represents the gold value of the nominal amount of each payment;* such gold value to be ascertained in accordance with the standard of weight and fineness existing at the time the respective contracts were entered into.

Feist vs. Societe Intercommunale Belge D'Electricite, decided by the House of Lords of England on Dec. 15, 1933;

The Serbian case, judgment of the Permanent Court of International Justice;

The Brazilian case, rendered by the Permanent Court of International Justice.

(See publications of the Permanent Court of International Justice, Series E, No. 5, p. 205, and Series E, No. 5, p. 216, being respectively judgments No. 14 and No. 15.)

In deciding those cases, those Courts have only restated the principles which this Court and all courts in Christendom have declared.

Never before has this Court been called upon to decide the application of those principles to written contracts, in a case where the acts of Congress, on their face, purport to violate those principles.

In the cases now at bar, those same principles must again control and be decisive of the issue, unless it can be said that there is something in the Constitution of the United States which authorizes a departure from those principles—unless it can be said that, under the Constitution of the United States, the Congress has power to arbitrarily set aside elementary principles of Justice and fixed and established principles of law by taking from one and giving to another *by its declaration that an obligation may be discharged upon payment of less than the amount specified.*

THE POWER WHICH CONGRESS PURPORTED TO EXERCISE *IF THE TWO ACTS BE READ TOGETHER.*

It is only when the Joint Resolution of June 5, 1933 is read *in conjunction with* the subsequent act of the Government in changing the essence of a dollar and the definition of a dollar, by reducing the gold content thereof, that it becomes apparent that Congress has attempted to declare the *amount* which shall discharge an obligation and has furthermore attempted to *reduce* such *amount* below the amount specified in the obligation itself.

It might be conceded that (standing by itself and

considered by itself) the act of the Government in taking possession of all gold was itself the exercise of a valid power. It might be viewed as a condemnation of gold, and payment of "just compensation" therefor, because the currency dollars which were paid for such gold were *at that time*, the *equivalent* thereof, and, at that time, *in fact*, actually represented the identical amount of gold which was the content of each of such gold dollars.

It might be conceded that the Joint Resolution of June 5, 1933 (standing by itself and considered by itself) was the exercise of a valid power by Congress; *provided* that Resolution be limited to currency dollars which were, *in fact*, the *equivalent* of, and which actually represented, the identical amount of gold which constituted the gold dollar as precisely specified.

It might be conceded that (standing by itself and considered by itself) the act of the Government in reducing the gold content of the dollar was the exercise of a valid power. The Constitution gives to Congress the power to coin money and to "regulate the value thereof."

But, notwithstanding that such concessions might be made, as to the validity of each of those acts (*standing by itself* and when it is *considered by itself*), nevertheless, if the *combined effect* of two or more of such legislative acts produces a *result*, which is prohibited by the Constitution, that *result* is invalid and utterly void, because it transcends the power of Congress.

The *combined effect* of two or more of those acts, when read together, is to deprive a person of his property without due process of law.

The same *result* is obtained if the Joint Resolution be extended so as to apply even after January 31, 1934, upon which date the meaning of the word "dollar," used in the Resolution, was changed.

The *result* of depriving a person of his property without due process of law cannot be obtained without violating the express provision of the Fifth Amendment to the Constitution of the United States.

It would not be obtained if the words "dollar for dollar," in that Resolution, be limited so as to apply only when and while the word "dollar" meant 25 8/10 grains of gold.

The combined effect obtained by reading the Joint Resolution of June 5, 1933, in connection with the subsequent act of the Government in reducing the gold content of a dollar, or the effect of extending the Joint Resolution so as to apply after the statutory definition of a dollar had been changed by reducing the gold content of the dollar, is to abrogate *pro tanto* outstanding contracts and to relieve the debtors *pro tanto* from liability on contracts without making compensation to the creditors.

It relieves the debtor of a liability to pay 25 8/10 grains of gold, by permitting him to pay in discharge of that debt currency *equivalent* only to 15 5/21 grains of gold.

Such action is prohibited by the Fifth Amendment to the Constitution.

> Lynch v. United States, 292 U. S. 571, and other decisions there cited.

In that case this Court said:

> "But Congress was without power to reduce

expenditures by abrogating contractual obligations of the United States."

We respectfully submit that Congress is equally without power to "assure the uniform value of the coins and currencies of the United States" by declaring that obligations which, by their terms, are to be paid in dollars *equivalent* to and representing 25 8/10 grains of gold each, may be discharged upon payment of currency dollars which are *equivalent* only to and represent only 15 5/21 grains of gold.

CONGRESS HAS NO POWER TO IMPAIR THE OBLIGATION OF A VALID CONTRACT.

It is sometimes stated and the statement is contained in some of the opinions appealed from, that the express prohibition in the Constitution against the enactment of any law which impairs the obligation of a contract is, by its terms, applicable to the enactment of a law by the States as distinguished from the Federal Government.

It is undoubtedly correct that the prohibition, *as expressed*, is limited to the States, but, we most respectfully submit that it cannot be successfully argued from that fact: that under the Constitution, *absent an express grant of such power to Congress*, Congress has power to pass a law which impairs the obligation of a contract.

The purpose of the Constitution was, as this Court has said, "the protection of contracts."

The protection of contracts is necessary if the inalienable human rights of a free people are to be preserved.

This Court has said:—

"The inviolability of contracts and the duty of performing them, as made, are foundations of all well-ordered society, and to prevent the removal or disturbance of these foundations was one of the great objects for which the Constitution was framed."

Murray v. Charleston, 96 U. S. 449.

"Rights acquired by a deed, will or contract of marriage, or other contract executed according to statutes subsequently repealed subsist afterwards, as they were before, in all respects as if the statutes were still in full force. This is a principle of universal jurisprudence. It is necessary to the repose and welfare of all communities. A different rule would shake the social fabric to its foundations and let in a floodtide of intolerable evils. It would be contrary to 'the general principles of law and reason,' and to one of the most vital ends of government. Calder v. Bull, 3 Dall. 388. The doctrines of the repeal of statutes and the destruction of vested rights by implication, are alike unfavored in the law. Neither is to be admitted unless the implication is so clear as to be equivalent to an explicit declaration. Every doubt should be resolved against a construction so fraught with mischiefs. There is nothing in the language of the Amendment which in the slightest degree warrants the inference that those who framed or those who adopted it intended that such should be its effect. It is wholly silent upon the subject. The proposition, if carried out in this case, would, in effect, take away one man's property and give it to another. And the deprivation would be 'without due process of law.' This is forbidden by the fundamental prin-

ciples of the social compact, and is beyond the sphere of the legislative authority both of the states and the nation."

Osborn vs. Nicholson, 13 Wallace 654.

Again, in Hepburn vs. Griswold, 8 Wallace, l. c. 623, this Court said:

"But we think it clear that those who framed and those who adopted the Constitution, intended that the spirit of this prohibition should pervade the entire body of legislation, and that the justice which the Constitution was ordained to establish was not thought by them to be compatible with legislation of an opposite tendency. In other words, we cannot doubt that a law not made in pursuance of an express power, which necessarily and in its direct operation impairs the obligation of contracts, is inconsistent with the spirit of the Constitution."

The above quotation from Hepburn vs. Griswold was not overruled or contradicted by the decision of this Court in the Legal Tender cases.

The decision in the Legal Tender cases was limited to sustaining the constitutionality of the Legal Tender acts as applied to debts.

In doing so, the Court said:

"In so holding, we overrule *so much of what was decided* in Hepburn vs. Griswold, 8 Wallace 603, as ruled the acts unwarranted by the Constitution, so far as they apply to contracts made before their enactment."

Knox vs. Lee, 12 Wallace 457.

But as applied to debts expressed only in *money* the Legal Tender acts did not impair the obligation of a contract.

In the principal Legal Tender decision, the Court asserted its conclusion in the following words:

> "What we do assert is that Congress has power to enact that the Government's promises to pay money shall be for the time being equivalent in value to the representative of value determined by the Coinage Acts or to multiples thereof."
>
> Knox vs. Lee, 12 Wallace 457.

The decision, therefore, held the Legal Tender Act to be valid as applied to debts, which, by their terms, were expressed only in *money*. But, it must be noted that the greenbacks, to which the decision applied, were the "equivalent in value to the representative of value, as determined by the Coinage Acts" in effect when the contracts were made.

Each greenback represented the *precise dollar* which had been *specified* in the contracts *then* before the Court.

The situation now before this Court is entirely different.

The greenbacks which exist in the United States today are not "the equivalent in value to the representative of value, as determined by the Coinage Acts," which were in effect, when the contracts, *now* before this Court, were made.

The existing greenbacks do not represent the *precise dollar* which was *specified* in the contracts *now* before the Court.

Under those decisions, and under the decision of this Court in Lynch vs. United States, supra, we most

respectfully submit that it cannot be asserted that Congress has power to reduce the amount necessary to constitute payment and to thereby impair the obligation of a legitimate contract.

Nor can it be argued that Congress has such power from the fact that Bankruptcy statutes impair the obligation of contracts—the power to enact Bankruptcy statutes was expressly granted to Congress and that power was based upon the wisdom of human experience and the policy of mankind to enable a man to fulfill his obligations *to the extent of his assets* and thereupon again start fresh.

It may be, too, denied whether in fact a Bankruptcy statute impairs the obligation of a contract. It would seem more proper to say that the obligation of a contract exists and *is allowed in full* as a claim against the assets of the bankrupt; but, that for reasons founded in the above mentioned human experience, the remedy or recovery is limited to a proportionate share of the assets of the bankrupt.

We submit that there is no proper analogy between the enactment of a Bankruptcy statute by Congress, *under an express power given to Congress*, and the enactment by Congress of laws, in the *absence* of any express power given to Congress, which, in their operation, impair the obligation of contracts made between citizens or between citizens and States or between citizens and the United States.

The assumption of such power by Congress, if applied to the contracts of the Government would be as this Court said in Lynch v. U. S., *supra*, *"repudiation"*; as applied to contracts between individuals it would be the taking of the property of one and giving to another without just compensation, and would,

therefore, be depriving a citizen of his property without due process of law.

A SIMPLE ANALOGY.

The subject matter of these cases has frequently been discussed and presented as being involved because it is *money*, but, that fact makes it no more involved than if it were *grain*.

If, in 1932 farmer Jones had loaned to farmer Brown one hundred bushels of wheat for two years, and if farmer Brown had evidenced his debt by the following written obligation,

> "Two years after date I promise to pay to John Jones 100 bushels of wheat according to the standard fixed by the metric system of dry measure as now established by act of Congress,"

such obligation would speak for itself in the plainest words in their ordinary meaning.

Suppose that, on June 5, 1933, Congress had changed the units of dry measure and had legislated that the quantity which had theretofore constituted a peck should thereafter constitute a bushel, and also purported or attempted to enact a law which said that all contracts made prior to June 5, 1933, which called for the delivery of bushels of wheat should be discharged upon delivery of the specified number of bushels measured by the new units of dry measure, so that one hundred of such new bushels consisted of only one-quarter the total quantity of wheat which had been originally loaned by farmer Jones.

Let us suppose that thereafter, in 1934, Mr. Brown had tendered to Mr. Jones an amount of wheat con-

sisting of exactly one-quarter the amount which he had borrowed, but, which consisted of one hundred of the new bushels as reduced by the new units of measure.

Without question, Congress had power to fix the units of dry measure. Equally without question, Congress had *no power* to specify the quantity of wheat which would discharge the debt.

The lack of such power is apparent because,

a) The *amount* which may be necessary to discharge a debt is a judicial question,

b) The purported act of Congress would have deprived farmer Jones of his property without due process of law, and

c) It would have impaired the obligation of his contract.

THE REASON THAT MANY STATEMENTS ARE INVOLVED.

Much has been said and much has been written concerning the question now before the Court and many statements are, at first glance, apt to mislead.

This is due to the fact that the word "dollar" has frequently been used in the same sentence in two different meanings.

The phrase "dollar of the United States" was without meaning prior to the time when Congress had *fixed* and had thereby defined the "dollar" of the United States.

At the time the various contracts, now before this Court, were entered into, Congress had done that and, therefore, the word "dollar" of the weight and fineness specified meant the unit of value of the United States consisting of 25 8/10 grains of gold. After

January 31, 1934, the word "dollar" meant the unit of value of the United States equal to 15 5/21 grains of gold.

The following is an example of such a statement which is apt to mislead:

> "Does it take one dollar and sixty-nine cents to pay a debt of one dollar?"

That sentence uses the word "dollar" twice and each time in a different sense and with a different meaning.

Attributing the two different meanings to the word, the same thought, if properly expressed, would be:

> "Does the payment of currency equal to 15 5/21 grains of gold pay a debt of 25 8/10 grains of gold?"

The same comment is applicable to the use of the symbol "$" which is frequently used in the same sentence to indicate the word dollar, but with two different meanings.

A sentence may be written:

> "Does it take $1.69 to pay a debt of $1.00?"

But, that sentence, as written, uses the same symbol "$" to express two different entities. One a dollar consisting of 25 8/10 grains of gold and the other a dollar consisting of 15 5/21 grains of gold.

CONGRESS, BY ITS OWN ACTION, HAS STATED WHAT WOULD BE EQUITABLE.

Prior to the reduction in the gold content of the dollar, the Government of the Philippine Islands had

maintained in banks in this Country the major portion of the currency reserves of its monetary system, and had considered such deposits to be the equivalent of a gold reserve.

It was represented to Congress that under those circumstances it would be equitable to credit the Treasury of the Philippine Islands with an amount equal to the increase in value (resulting from the reduction of the weight of the gold dollar) of the balances maintained in the banks of the United States by the Government of the Philippine Islands.

See proceedings of the House of Representatives, June 14, 1934, Congressional Record.

Thereupon, the Congress of the United States, by law, authorized the Secretary of the Treasury to establish on the books of the Treasury of the United States, a credit in favor of the Treasury of the Philippine Islands for $23,862,750.78, being an amount equal to the increase in value (resulting from the reduction of the weight of the gold dollar) of the gold equivalent at the opening of business on January 31, 1934, of the balances maintained at that time in banks in the Continental United States by the Government of the Philippine Islands for its gold standard fund and its Treasury Certificate fund, less the interest received by it on such balances. The appropriation for that purpose was made.

Session Laws;
Statutes of the United States of America, 73 Congress Laws, 1115.

When the Congress of the United States has credited the Government of the Philippine Islands with

that amount representing the increased gold equivalent of the number of dollars which that Government had on deposit in the United States, *on the ground that such action would be equitable,* can it be asserted that a different treatment of the citizens of the United States, or a different method of settlement of the debts between citizens of the United States is equitable.

THE PRACTICAL PHASES OF THE MATTER

It has been asserted that, if the debtors be required to pay more than the number of dollars evidenced by their obligation, then such requirement itself might bankrupt them.

We submit that such an argument has no place in a Judicial Tribunal; but, if it has, there is a simple means to avoid such a dire result.

The Government of the United States might, tomorrow, restore the dollar to its original content.

So long as existing legislation makes it impossible to lawfully obtain and deal in gold, and substitutes the currency dollar therefor, it would seem that such a course might obviate the difficulties which are presented as an argument in support of the action of the Government.

The very fact that gold is not obtainable constitutes the most urgent reason for maintaining the standard and integrity of the dollar as fixed by statute. Such a course would sustain the confidence of the people in the currency and avoid any impairment of contracts.

In the light of history the confidence of the people in the currency of a country seems to be the first essential for recovery from a depression.

The dollar should remain a fixed, certain and definite thing.

This Court has made the following statement:

> "It (the Constitution) declares that 'no state shall coin money, emit bills of credit, make anything but gold and silver coin a tender in payment of debts.' These prohibitions, associated with the powers granted to Congress 'to coin money, and to regulate the value thereof, and of foreign coin,' most obviously constitute members of the same family, being upon the same subject, and governed by the same policy.
>
> This policy was to provide a *fixed* and uniform standard of value throughout the United States, by which the commercial and other dealings between the citizens thereof, or between them and foreigners, as well as the moneyed transactions of the government, should be regulated."
>
> Ogden vs. Saunders, 12 Wheaton, l. c. 264.

Notwithstanding the statement by this Court that the policy of the Constitution was to provide a *fixed* and uniform standard of value throughout the United States, it is worthy of note that the Joint Resolution of June 5, 1933, attempts to make impossible any *fixed* unit, and further attempts to make impossible any contract based upon or referring to a *fixed* unit.

That Resolution not only declares to be against public policy an obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, but also declares to be against public policy "every provision which purports to give the obligee a right to require payment in an amount in money of the United States *measured by gold.*"

The evident purpose of the express language of that Resolution is to preclude the *fixing* of a standard and to preclude the entering into any contract based upon a *fixed* standard.

Such a purpose violates the policy of the Constitution as declared by this Court.

THE NECESSARY CONSEQUENCES OF THE ACTS OF THE GOVERNMENT.

If the apparent result of the combined effect of the two acts of Congress be valid and within the Constitutional powers of Congress, there is no limit to which Congress may not go in repudiating the debts of the Government and to which it may not go in impairing or destroying the obligation of contracts between citizens.

> a) If Congress has power to declare that obligations, which express a promise to pay 25 8/10 grains of gold for each dollar specified, may be discharged by payment of 15 5/21 grains of gold for each dollar specified, or
>
> b) If the Joint Resolution of June 5, 1933, be construed or extended so as to apply at all times and regardless of what the word "dollar" may mean at different times;

then, and in either event, by the same reasoning, Congress would have power tomorrow to declare that what is now a dime should be a dollar, and thereupon all obligations payable in dollars might be discharged by payment in what we now call dimes, merely because Congress had given a new meaning to the word "dollar."

This Court itself has decided that after the meaning of a word has been changed, the new meaning thereof cannot be ascribed to the word as used in *prior* contracts.

In Hoffman v. Quincy, 4 Wallace 552, this Court said:

> "A statute declaring that the word 'ton' should thereafter be held, in prior as well as in subsequent contracts, to mean half or double the weight before prescribed, would affect its construction."

The Court then said that it could not be doubted either upon principle or authority that such a law would impair the obligation of a contract.

For which reasons, it is respectfully submitted that obligations which, by their terms, are payable in gold or the equivalent thereof of the standard of weight and fineness of March 14, 1900, may be discharged under existing circumstances only by payment of the amount of currency of the United States which is the equivalent of and which actually represents the amount of gold contained in the number of dollars of the weight and fineness specified in the various obligations at the time when they were entered into.

PAUL BAKEWELL, JR.,
Amicus Curiae.

St. Louis, Mo.

SUPREME COURT OF THE UNITED STATES.

Nos. 270, 471 and 472.—October Term, 1934.

Norman C. Norman, Petitioner, 270 *vs.* The Baltimore and Ohio Railroad Company.	On Writ of Certiorari to the Supreme Court of the State of New York.
The United States of America, Reconstruction Finance Corporation, et al., Petitioners, 471 *vs.* Bankers Trust Company and William H. Bixby, Trustees.	On Writs of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.
The United States of America, Reconstruction Finance Corporation, et al., Petitioners, 472 *vs.* Bankers Trust Company and William H. Bixby, Trustees.	

[February 18, 1935.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

These cases present the question of the validity of the Joint Resolution of the Congress, of June 5, 1933, with respect to the "gold clauses" of private contracts for the payment of money. 48 Stat. 112.

This Resolution, the text of which is set forth in the margin,[1]

[1] "Joint Resolution.

"To assure uniform value to the coins and currencies of the United States.

"Whereas the holding of or dealing in gold affect the public interest, and are therefore subject to proper regulation and restriction; and

"Whereas the existing emergency has disclosed that provisions of obligations which purport to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby, obstruct the power of the

declares that "every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby" is "against public policy". Such provisions in obligations thereafter incurred are prohibited. The Resolution provides that "Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts".

In No. 270, the suit was brought upon a coupon of a bond made by the Baltimore and Ohio Railroad Company under date of February 1, 1930, for the payment of $1,000 on February 1, 1960, and interest from date at the rate of 4½ per cent. per annum, payable semi-annually. The bond provided that the payment of principal and interest "will be made . . . in gold coin of the United States of America of or equal to the standard of weight and fineness existing on February 1, 1930". The coupon in suit, for $22.50, was payable on February 1, 1934. The complaint alleged that on February 1, 1930, the standard weight and fineness of a gold dollar of the United States as a unit of value "was fixed to consist of twenty-five and eight-tenths grains of gold, nine-tenths

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Congress to regulate the value of the money of the United States, and are inconsistent with the declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in the payment of debts. Now, therefore, be it

"*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That (a) every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. Any such provision contained in any law authorizing obligations to be issued by or under authority of the United States, is hereby repealed, but the repeal of any such provision shall not invalidate any other provision or authority contained in such law.

"(b) As used in this resolution, the term 'obligation' means an obligation (including every obligation of and to the United States, excepting currency)

fine", pursuant to the Act of Congress of March 14, 1900 (31 Stat. 45); and that by the Act of Congress known as the "Gold Reserve Act of 1934" (January 30, 1934, 48 Stat. 337), and by the order of the President under that Act, the standard unit of value of a gold dollar of the United States "was fixed to consist of fifteen and five-twenty-firsts grains of gold, nine-tenths fine", from and after January 31, 1934. On presentation of the coupon, defendant refused to pay the amount in gold, or the equivalent of gold in legal tender of the United States which was alleged to be, on February 1, 1934, according to the standard of weight and fineness existing on February 1, 1930, the sum of $38.10, and plaintiff demanded judgment for that amount.

Defendant answered that by Acts of Congress, and, in particular, by the Joint Resolution of June 5, 1933, defendant had been prevented from making payment in gold coin "or otherwise than dollar for dollar, in coin or currency of the United States (other than gold coin and gold certificates)" which at the time of payment constituted legal tender. Plaintiff, challenging the validity of the Joint Resolution under the Fifth and Tenth Amendments, and Article I, Section 1, of the Constitution of the United States, moved to strike the defense. The motion was denied. Judgment was entered for plaintiff for $22.50, the face of the coupon, and was affirmed upon appeal. The Court of Appeals of the State

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payable in money of the United States; and the term 'coin or currency' means coin or currency of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations.

"Sec. 2. The last sentence of paragraph (1) of subsection (b) of section 43 of the Act entitled 'An Act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes', approved May 12, 1933, is amended to read as follows:

"'All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations) heretofore or hereafter coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues, except that gold coins, when below the standard weight and limit of tolerance provided by law for the single piece, shall be legal tender only at valuation in proportion to their actual weight'.

"Approved, June 5, 1933, 4:40 p. m."

considered the federal question and decided that the Joint Resolution was valid. 265 N. Y. 37. This Court granted a writ of certiorari, October 8, 1934.

In Nos. 471 and 472, the question arose with respect to an issue of bonds, dated May 1, 1903, of the St. Louis, Iron Mountain & Southern Railway Company, payable May 1, 1933. The bonds severally provided for the payment of "One Thousand Dollars gold coin of the United States of the present standard of weight and fineness", with interest from date at the rate of four per cent. per annum, payable "in like gold coin semi-annually". In 1917, Missouri Pacific Railroad Company acquired the property of the obligor subject to the mortgage securing the bonds. In March, 1933, the United States District Court, Eastern District of Missouri, approved a petition filed by the latter company under Section 77 of the Bankruptcy Act. In the following December, the trustees under the mortgage asked leave to intervene, seeking to have the income of the property applied against the mortgage debt and alleging that the debt was payable "in gold coin of the United States of the standard of weight and fineness prevailing on May 1, 1903". Later, the Reconstruction Finance Corporation and the United States, as creditors of the debtor, filed a joint petition for leave to intervene, in which they denied the validity of the gold clause contained in the mortgage and bonds. Leave to intervene specially was granted to each applicant on April 5, 1934, and answers were filed. On the hearing, the District Court decided that the Joint Resolution of June 5, 1933, was constitutional and that the trustees were entitled, in payment of the principal of each bond, to $1,000 in money constituting legal tender. Decree was entered accordingly and the trustees (respondents here) took two appeals to the United States Circuit Court of Appeals.[2] While these appeals were pending, this Court granted writs of certiorari, November 5, 1934.

The Joint Resolution of June 5, 1933, was one of a series of measures relating to the currency. These measures disclose not only the purposes of the Congress but also the situations which existed at the time the Joint Resolution was adopted and when the payments under the "gold clauses" were sought. On March 6,

[2]One appeal was allowed by the District Judge and the other by the Circuit Court of Appeals.

1933, the President, stating that there had been "heavy and unwarranted withdrawals of gold and currency from our banking institutions for the purpose of hoarding" and "extensive speculative activity abroad in foreign exchange" which had resulted "in severe drains on the Nation's stocks of gold", and reciting the authority conferred by Section 5 (b) of the Act of October 6, 1917 (40 Stat. 411), declared "a bank holiday" until March 9, 1933. On the same date, the Secretary of the Treasury, with the President's approval, issued instructions to the Treasurer of the United States to make payments in gold in any form only under license issued by the Secretary.

On March 9, 1933, the Congress passed the Emergency Banking Act. 48 Stat. 1. All orders issued by the President or the Secretary of the Treasury since March 4, 1933, under the authority conferred by Section 5 (b) of the Act of October 6, 1917, were confirmed. That section was amended so as to provide that during any period of national emergency declared by the President, he might "investigate, regulate or prohibit", by means of licenses or otherwise, "any transactions in foreign exchange, transfers of credit between or payments by banking institutions as defined by the President, and export, hoarding, melting, or earmarking of gold or silver coin or bullion or currency, by any person within the United States or any place subject to the jurisdiction thereof". The Act also amended Section 11 of the Federal Reserve Act (39 Stat. 752) so as to authorize the Secretary of the Treasury to require all persons to deliver to the Treasurer of the United States "any or all gold coin, gold bullion, and gold certificates" owned by them, and that the Secretary should pay therefor "an equivalent amount of any other form of coin or currency coined or issued under the laws of the United States". By Executive Order of March 10, 1933, the President authorized banks to be reopened, as stated, but prohibited the removal from the United States, or any place subject to its jurisdiction, of "any gold coin, gold bullion, or gold certificates, except in accordance with regulations prescribed by or under license issued by the Secretary of the Treasury". By further Executive Order of April 5, 1933, forbidding hoarding, all persons were required to deliver, on or before May 1, 1933, to stated banks "all gold coin, gold bullion and gold certificates", with certain exceptions, the holder to receive

"an equivalent amount of any other form of coin or currency coined or issued under the laws of the United States". Another Order of April 20, 1933, contained further requirements with respect to the acquisition and export of gold and to transactions in foreign exchange

By Section 43 of the Agricultural Adjustment Act of May 12, 1933 (48 Stat. 51), it was provided that the President should have authority, upon the making of prescribed findings and in the circumstances stated, "to fix the weight of the gold dollar in grains nine tenths fine and also to fix the weight of the silver dollar in grains nine tenths fine at a definite fixed ratio in relation to the gold dollar at such amounts as he finds necessary from his investigation to stabilize domestic prices or to protect the foreign commerce against the adverse effect of depreciated foreign currencies", and it was further provided that the "gold dollar, the weight of which is so fixed, shall be the standard unit of value", and that "all forms of money shall be maintained at a parity with this standard", but that "in no event shall the weight of the gold dollar be fixed so as to reduce its present weight by more than 50 per centum".

Then followed the Joint Resolution of June 5, 1933. There were further Executive Orders of August 28 and 29, 1933, October 25, 1933, and January 11 and 15, 1934, relating to the hoarding and export of gold coin, gold bullion and gold certificates, to the sale and export of gold recovered from natural deposits, and to transactions in foreign exchange, and orders of the Secretary of the Treasury, approved by the President, on December 28, 1933, and January 15, 1934, for the delivery of gold coin, gold bullion and gold certificates to the United States Treasury.

On January 30, 1934, the Congress passed the "Gold Reserve Act of 1934" (48 Stat. 337) which, by section 13, ratified and confirmed all the actions, regulations and orders taken or made by the President and the Secretary of the Treasury under the Act of March 9, 1933, or under Section 43 of the Act of May 12, 1933, and, by section 12, with respect to the authority of the President to fix the weight of the gold dollar, provided that it should not be fixed "in any event at more than 60 per centum of its present weight". On January 31, 1934, the President issued his proclamation declaring that he fixed "the weight of the gold dollar to be 15 5/21 grains nine tenths fine", from and after that date.

We have not attempted to summarize all the provisions of these measures. We are not concerned with their wisdom. The question before the Court is one of power, not of policy. And that question touches the validity of these measures at but a single point, that is, in relation to the Joint Resolution denying effect to "gold clauses" in existing contracts. The Resolution must, however, be considered in its legislative setting and in the light of other measures *in pari materia.*

First. The interpretation of the gold clauses in suit. In the case of the *Baltimore and Ohio Railroad Company,* the obligor considers the obligation to be one "for the payment of money and not for the delivery of a specified number of grains or ounces of gold"; that it is an obligation payable in money of the United States and not less so because payment is to be made "in a particular kind of money"; that it is not a "commodity contract" which could be discharged by "tender of bullion". At the same time, the obligor contends that, while the Joint Resolution is constitutional in either event, the clause is a "gold coin" and not a "gold value" clause; that is, it does not imply "a payment in the 'equivalent' of gold in case performance by payment in gold coin is impossible". The parties, runs the argument, intended that the instrument should be negotiable and hence it should not be regarded as one "for the payment of an indeterminate sum ascertainable only at date of payment". And in the reference to the standard of weight and fineness, the words "equal to" are said to be synonymous with "of".

In the case of the bonds of the *St. Louis, Iron Mountain & Southern Railway Company,* the Government urges that by providing for payment in gold coin the parties showed an intention "to protect against depreciation of one kind of money as compared with another, as for example, paper money compared with gold, or silver compared with gold"; and, by providing that the gold coin should be of a particular standard, they attempted "to assure against payment in coin of lesser gold content". The clause, it is said, "does not reveal an intention to protect against a situation where gold coin no longer circulates and all forms of money are maintained in the United States at a parity with each other"; apparently, "the parties did not anticipate the existence of conditions making it impossible and illegal to procure gold coin with which to meet the obligations". In view of that impossibility, as-

serted to exist both in fact and in law, the Government contends that "the present debtor would be excused, in an action on the bonds, from the obligation to pay in gold coin," but, "as only one term of the promise in the gold clause is impossible to perform and illegal", the remainder of the obligation should stand and thus the obligation "becomes one to pay the stated number of dollars".

The bondholder in the first case, and the trustees of the mortgage in the second case, oppose such an interpretation of the gold clauses as inadequate and unreasonable. Against the contention that the agreement was to pay in gold coin if that were possible, and not otherwise, they insist that it is beyond dispute that the gold clauses were used for the very purpose of guarding against a depreciated currency. It is pointed out that the words "gold coin of the *present* standard" show that the parties contemplated that when the time came to pay there might be gold dollars of a new standard, and, if so, that "gold coin of the present standard" would pass from circulation; and it is taken to be admitted, by the Government's argument, that if gold coins of a lesser standard were tendered, they would not have to be accepted unless they were tendered in sufficient amount to make up the "gold value" for which, it is said, the contract called. It is insisted that the words of the gold clause clearly show an intent "to establish a measure or standard of value of the money to be paid if the particular kind of money specified in the clause should not be in circulation at the time of payment". To deny the right of the bondholders to the equivalent of the gold coin promised is said to be not a construction of the gold clause but its nullification.[3]

[3]As illustrating the use of such clauses as affording a standard or measure of value, counsel refer to Article 262 of the Treaty of Versailles with respect to the monetary obligations of Germany which were made payable in gold coins of several countries, with the stated purpose that the gold coins mentioned "shall be defined as being of the weight and fineness of gold as enacted by law on January 1, 1914". Reference is also made to the construction of the gold clause in the bonds before the House of Lords in *Feist, appellant, and Société Intercommunale Belge d'Electricité, respondents,* (L. R. (1934) A. C. 161, 173) and to the decisions of the Permanent Court of International Justice in the cases of the Serbian and Brazilian loans (Publications of the Permanent Court of International Justice, Series A, Nos. 20/21) where the bonds provided for payment in gold francs.

The decisions of this Court relating to clauses for payment in gold did not deal with situations corresponding to those now presented. *Bronson* v. *Rodes,* 7 Wall. 229; *Butler* v. *Horwitz,* 7 Wall. 258; *Dewing* v. *Sears,* 11 Wall. 379; *Trebilcock* v. *Wilson,* 12 Wall. 687; *Thompson* v. *Butler,* 95 U. S. 694; *Gregory* v. *Morris,* 96 U. S. 619. See, also, *The Vaughan and Telegraph,* 14 Wall. 258; *The Emily Souder,* 17 Wall. 666. The rulings, upholding gold clauses and determining their effect, were made when gold was still in circulation and no act of the Congress prohibiting the enforcement of such clauses had been passed. In *Bronson* v. *Rodes, supra,* p. 251, the Court held that the legal tender acts of 1862 and 1863, apart from any question of their constitutionality, had not repealed or modified the laws for the coinage of gold and silver or the statutory provisions which made those coins a legal tender in all payments. It followed, said the Court, that "there were two descriptions of money in use at the time the tender under consideration was made, both authorized by law, and both made legal tender in payments. The statute denomination of both descriptions was dollars; but they were essentially unlike in nature". Accordingly, the contract of the parties for payment in one sort of dollars, which was still in lawful circulation, was sustained. The case of *Trebilcock* v. *Wilson, supra,* was decided shortly after the legal tender acts had been held valid. The Court again concluded (pp. 695, 696) that those acts applied only to debts which were payable in money generally, and that there were "according to that decision, two kinds of money, essentially different in their nature, but equally lawful". In that view, said the Court, "contracts payable in either, or for the possession of either, must be equally lawful, and, if lawful, must be equally capable of enforcement".

With respect to the interpretation of the clauses then under consideration, the Court observed, in *Bronson* v. *Rodes, supra,* p. 250, that a contract to pay a certain number of dollars in gold or silver coins was, in legal import, nothing else than an agreement to deliver a certain weight of standard gold, to be ascertained by a count of coins, each of which is certified to contain a definite proportion of that weight". The Court thought that it was not distinguishable, in principle, "from a contract to deliver an equal weight of bullion of equal fineness". That observation was not necessary to the final conclusion. The decision went upon

the assumption "that engagements to pay coined dollars may be regarded as ordinary contracts to pay money rather than as contracts to deliver certain weights of standard gold". *Id.* p. 251.

In *Trebilcock* v. *Wilson, supra,* where a note was payable "*in specie*", the Court said (pp. 694, 695) that the provision did not "assimilate the note to an instrument in which the amount stated is payable in chattels; as, for example, to a contract to pay a specified sum in lumber, or in fruit, or grain"; that the terms "*in specie*" were "merely descriptive of the kind of dollars in which the note is payable, there being different kinds in circulation, recognized by law"; that they meant "that the designated number of dollars in the note shall be paid in so many gold or silver dollars of the coinage of the United States". And in *Thompson* v. *Butler, supra,* pp. 696, 697, the Court adverted to the statement made in *Bronson* v. *Rodes,* and concluded that "notwithstanding this, it is a contract to pay money, and none the less so because it designates for payment one of the two kinds of money which the law has made a legal tender in discharge of money obligations". Compare *Gregory* v. *Morris, supra.*

We are of the opinion that the gold clauses now before us were not contracts for payment in gold coin as a commodity, or in bullion, but were contracts for the payment of money. The bonds were severally for the payment of one thousand dollars. We also think that, fairly construed, these clauses were intended to afford a definite standard or measure of value, and thus to protect against a depreciation of the currency and against the discharge of the obligation by a payment of lesser value than that prescribed. When these contracts were made they were not repugnant to any action of the Congress. In order to determine whether effect may now be given to the intention of the parties in the face of the action taken by the Congress, or the contracts may be satisfied by the payment dollar for dollar, in legal tender, as the Congress has now prescribed, it is necessary to consider (1) the power of the Congress to establish a monetary system and the necessary implications of that power; (2) the power of the Congress to invalidate the provisions of existing contracts which interfere with the exercise of its constitutional authority; and (3) whether the clauses in question do constitute such an interference as to bring them within the range of that power.

Second. The power of the Congress to establish a monetary system. It is unnecessary to review the historic controversy as to the extent of this power, or again to go over the ground traversed by the Court in reaching the conclusion that the Congress may make treasury notes legal tender in payment of debts previously contracted, as well as of those subsequently contracted, whether that authority be exercised in course of war or in time of peace. *Knox* v. *Lee*, 12 Wall. 457; *Juilliard* v. *Greenman*, 110 U. S. 421. We need only consider certain postulates upon which that conclusion rested.

The Constitution grants to the Congress power "To coin money, regulate the value thereof, and of foreign coin". Art. I, sec. 8, par. 5. But the Court in the legal tender cases did not derive from that express grant alone the full authority of the Congress in relation to the currency. The Court found the source of that authority in all the related powers conferred upon the Congress and appropriate to achieve "the great objects for which the government was framed",—"a national government, with sovereign powers". *McCulloch* v. *Maryland*, 4 Wheat. 316, 404-407; *Knox* v. *Lee, supra*, pp. 532, 536; *Juilliard* v. *Greenman, supra*, p. 438. The broad and comprehensive national authority over the subjects of revenue, finance and currency is derived from the aggregate of the powers granted to the Congress, embracing the powers to lay and collect taxes, to borrow money, to regulate commerce with foreign nations and among the several States, to coin money, regulate the value thereof, and of foreign coin, and fix the standards of weights and measures, and the added express power "to make all laws which shall be necessary and proper for carrying into execution" the other enumerated powers. *Juilliard* v. *Greenman, supra*, pp. 439, 440.

The Constitution "was designed to provide the same currency, having a uniform legal value in all the States". It was for that reason that the power to regulate the value of money was conferred upon the Federal government, while the same power, as well as the power to emit bills of credit, was withdrawn from the States. The States cannot declare what shall be money, or regulate its value. Whatever power there is over the currency is vested in the Congress. *Knox* v. *Lee, supra*, p. 545. Another postulate of the decision in that case is that the Congress has power "to enact that the

government's promises to pay money shall be, for the time being, equivalent in value to the representative of value determined by the coinage acts, or to multiples thereof". *Id.*, p. 553. Or, as was stated in the *Juilliard* case, *supra*, p. 447, the Congress is empowered "to issue the obligations of the United States in such form, and to impress upon them such qualities as currency for the purchase of merchandise and the payment of debts, as accord with the usage of sovereign governments". The authority to impose requirements of uniformity and parity is an essential feature of this control of the currency. The Congress is authorized to provide "a sound and uniform currency for the country", and to "secure the benefit of it to the people by appropriate legislation". *Veazie Bank* v. *Fenno*, 8 Wall. 533, 549.

Moreover, by virtue of this national power, there attaches to the ownership of gold and silver those limitations which public policy may require by reason of their quality as legal tender and as a medium of exchange. *Ling Su Fan* v. *United States*, 218 U. S. 302, 310. Those limitations arise from the fact that the law "gives to such coinage a value which does not attach as a mere consequence of intrinsic value". Their quality as legal tender is attributed by the law, aside from their bullion value. Hence the power to coin money includes the power to forbid mutilation, melting and exportation of gold and silver coin,—"to prevent its outflow from the country of its origin". *Id.*, p. 311.

Dealing with the specific question as to the effect of the legal tender acts upon contracts made before their passage, that is, those for the payment of money generally, the Court, in the legal tender cases, recognized the possible consequences of such enactments in frustrating the expected performance of contracts,—in rendering them "fruitless or partially fruitless". The Court pointed out that the exercise of the powers of Congress may affect "apparent obligations" of contracts in many ways. The Congress may pass bankruptcy acts. The Congress may declare war, or, even in peace, pass non-intercourse acts, or direct an embargo, which may operate seriously upon existing contracts. And the Court reasoned that if the legal tender acts "were justly chargeable with impairing contract obligations, they would not, for that reason, be forbidden, unless a different rule is to be applied to them from that which has hitherto prevailed in the construction of other powers granted by

the fundamental law". The conclusion was that contracts must be understood as having been made in reference to the possible exercise of the rightful authority of the Government, and that no obligation of a contract "can extend to the defeat" of that authority. *Knox* v. *Lee, supra,* pp. 549-551.

On similar grounds, the Court dismissed the contention under the Fifth Amendment forbidding the taking of private property for public use without just compensation or the deprivation of it without due process of law. That provision, said the Court, referred only to a direct appropriation. A new tariff, an embargo, or a war, might bring upon individuals great losses; might, indeed, render valuable property almost valueless,—might destroy the worth of contracts. "But whoever supposed" asked the Court, "that, because of this, a tariff could not be changed or a non-intercourse act, or embargo be enacted, or a war be declared". The Court referred to the Act of June 28, 1834, by which a new regulation of the weight and value of gold coin was adopted, and about six per cent. was taken from the weight of each dollar. The effect of the measure was that all creditors were subjected to a corresponding loss, as the debts then due "became solvable with six per cent. less gold than was required to pay them before". But it had never been imagined that there was a taking of private property without compensation or without due process of law. The harshness of such legislation, or the hardship it may cause, afforded no reason for considering it to be unconstitutional. *Id.,* pp. 551, 552.

The question of the validity of the Joint Resolution of June 5, 1933, must be determined in the light of these settled principles.

Third. The power of the Congress to invalidate the provisions of existing contracts which interfere with the exercise of its constitutional authority. The instant cases involve contracts between private parties, but the question necessarily relates as well to the contracts or obligations of States and municipalities, or of their political subdivisions, that is, to such engagements as are within the reach of the applicable national power. The Government's own contracts—the obligations of the United States—are in a distinct category and demand separate consideration. See *Perry* v. *United States,* decided this day.

The contention is that the power of the Congress, broadly sustained by the decisions we have cited in relation to private contracts for the payment of money generally, does not extend to the

striking down of express contracts for gold payments. The acts before the Court in the legal tender cases, as we have seen, were not deemed to go so far. Those acts left in circulation two kinds of money, both lawful and available, and contracts for payments in gold, one of these kinds, were not disturbed. The Court did not decide that the Congress did not have the constitutional power to invalidate existing contracts of that sort, if they stood in the way of the execution of the policy of the Congress in relation to the currency. Mr. Justice Bradley, in his concurring opinion, expressed the view that the Congress had that power and had exercised it. *Knox* v. *Lee, supra,* pp. 566, 567. And, upon that ground, he dissented from the opinion of the Court in *Trebilcock* v. *Wilson, supra,* p. 699, as to the validity of contracts for payment "*in specie*".[4] It is significant that Mr. Justice Bradley, referring to this difference of opinion in the legal tender cases, remarked (in his concurring opinion) that "of course" the difference arose "from the different construction given to the legal tender acts". "I do not understand", he said, "the majority of the court to decide that an act so drawn as to embrace, in terms, contracts payable in specie, would not be constitutional. Such a decision would completely nullify the power claimed for the government. For it would be very easy, by the use of one or two additional words, to make all contracts payable in specie".

Here, the Congress has enacted an express interdiction. The argument against it does not rest upon the mere fact that the legislation may cause hardship or loss. Creditors who have not stipulated for gold payments may suffer equal hardship or loss with creditors who have so stipulated. The former, admittedly, have no constitutional grievance. And, while the latter may not suffer more, the point is pressed that their express stipulations for gold payments constitute property, and that creditors who have not such stipulations are without that property right. And the contestants urge that the Congress is seeking not to regulate the currency, but to regulate contracts, and thus has stepped beyond the power conferred.

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[4] Mr. Justice Miller also dissented in Trebilcock *v.* Wilson, 12 Wall., pp. 699, 700, upon the ground "that a contract for gold dollars, in terms, was in no respect different, in legal effect, from a contract for dollars without the qualifying words, specie, or gold, and that the legal tender statutes had, therefore, the same effect in both cases".

This argument is in the teeth of another established principle. Contracts, however express, cannot fetter the constitutional authority of the Congress. Contracts may create rights of property, but when contracts deal with a subject matter which lies within the control of the Congress, they have a congenital infirmity. Parties cannot remove their transactions from the reach of dominant constitutional power by making contracts about them. See *Hudson Water Co.* v. *McCarter*, 209 U. S. 349, 357.

This principle has familiar illustration in the exercise of the power to regulate commerce. If shippers and carriers stipulate for specified rates, although the rates may be lawful when the contracts are made, if Congress through the Interstate Commerce Commission exercises its authority and prescribes different rates, the latter control and override inconsistent stipulations in contracts previously made. This is so, even if the contract be a charter granted by a State and limiting rates, or a contract between municipalities and carriers. *New York* v. *United States*, 257 U. S. 591, 600, 601; *United States* v. *Village of Hubbard*, 266 U. S. 474, 477, *note*. See, also, *Armour Packing Co.* v. *United States*, 209 U. S. 56, 80-82; *Union Dry Goods Co.* v. *Georgia Public Service Corporation*, 248 U. S. 372, 375.

In *Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211, 229, 230, the Court raised the pertinent question,—if certain kinds of private contracts directly limit or restrain, and hence regulate interstate commerce, why should not the power of Congress reach such contracts equally with legislation of a State to the same effect? "What sound reason", said the Court, "can be given why Congress should have the power to interfere in the case of the State, and yet have none in the case of the individual? Commerce is the important subject of consideration, and anything which directly obstructs and thus regulates that commerce which is carried on among the States, whether it is state legislation or private contracts between individuals or corporations, should be subject to the power of Congress in the regulation of that commerce".

Applying that principle, the Court held that a contract, valid when made (in 1871) for the giving of a free pass by an interstate carrier, in consideration of a release of a claim for damages, could not be enforced after the Congress had passed the Act of

June 29, 1906, 38 Stat. 584. *Louisville & Nashville Railroad Company* v. *Mottley*, 219 U. S. 467.[5] Quoting the statement of the general principle in the legal tender cases, the Court decided that the agreement must necessarily be regarded as having been made subject to the possibility that, at some future time, the Congress "might so exert its whole constitutional power in regulating interstate commerce as to render that agreement unenforceable or to impair its value". The Court considered it inconceivable that the exercise of such power "may be hampered or restricted to any extent by contracts previously made between individuals or corporations". "The framers of the Constitution never intended any such state of things to exist". *Id.*, p. 482. Accordingly, it has been "authoritatively settled" by decisions of this Court that no previous contracts or combinations can prevent the application of the Anti-Trust Acts to compel the discontinuance of combinations declared to be illegal. *Addyston Pipe & Steel Co.* v. *United States*, *supra*; *United States* v. *Southern Pacific Company*, 259 U. S. 214, 234, 235. See, also, *Calhoun* v. *Massie*, 253 U. S. 170, 176; *Omnia Commercial Co.* v. *United States*, 261 U. S. 502, 509; *Stephenson* v. *Binford*, 287 U. S. 251, 276.

The principle is not limited to the incidental effect of the exercise by the Congress of its constitutional authority. There is no constitutional ground for denying to the Congress the power expressly to prohibit and invalidate contracts although previously made, and valid when made, when they interfere with the carrying out of the policy it is free to adopt. The exercise of this power is illustrated by the provision of section 5 of the Employers' Liability Act of 1908 (35 Stat. 65, 66) relating to any contract the purpose of which was to enable a common carrier to exempt itself from the liability which the Act created. Such a stipulation the Act explicitly declared to be void. In the *Second Employers' Liability Cases*, 223 U. S. 1, 52, the Court decided that as the Congress possessed the power to impose the liability, it also possessed the power "to insure its efficacy by prohibiting any contract, rule, regulation or device in evasion of it". And this prohibition the Court has held to be applicable to contracts made before the Act was passed. *Philadelphia, Baltimore & Washing-*

[5]Compare New York Central & Hudson R. R. Co. *v.* Gray, 239 U. S. 583; Calhoun *v.* Massie, 253 U. S. 170, 176.

ton R. R. Co. v. *Schubert,* 224 U. S. 603. In that case, the employee, suing under the Act, was a member of the "Relief Fund" of the railroad company under a contract of membership, made in 1905, for the purpose of securing certain benefits. The contract provided that an acceptance of those benefits should operate as a release of claims, and the company pleaded that acceptance as a bar to the action. The Court held that the Employers' Liability Act supplied the governing rule and that the defense could not be sustained. The power of the Congress in regulating interstate commerce was not fettered by the necessity of maintaining existing arrangements and stipulations which would conflict with the execution of its policy. The reason is manifest. To subordinate the exercise of the Federal authority to the continuing operation of previous contracts would be to place to this extent the regulation of interstate commerce in the hands of private individuals and to withdraw from the control of the Congress so much of the field as they might choose by "prophetic discernment" to bring within the range of their agreements. The Constitution recognizes no such limitation. *Id.*, pp. 613, 614. See, also, *United States* v. *Southern Pacific Company, supra; Sproles* v. *Binford,* 286 U. S. 374, 390, 391; *Radio Commission* v. *Nelson Brothers Company,* 289 U. S. 266, 282.

The same reasoning applies to the constitutional authority of the Congress to regulate the currency and to establish the monetary system of the country. If the gold clauses now before us interfere with the policy of the Congress in the exercise of that authority, they cannot stand.

Fourth. The effect of the gold clauses in suit in relation to the monetary policy adopted by the Congress. Despite the wide range of the discussion at the bar and the earnestness with which the arguments against the validity of the Joint Resolution have been pressed, these contentions necessarily are brought, under the dominant principles to which we have referred, to a single and narrow point. That point is whether the gold clauses do constitute an actual interference with the monetary policy of the Congress in the light of its broad power to determine that policy. Whether they may be deemed to be such an interference depends upon an appraisement of economic conditions and upon determinations of questions of fact. With respect to those conditions and determi-

nations, the Congress is entitled to its own judgment. We may inquire whether its action is arbitrary or capricious, that is, whether it has reasonable relation to a legitimate end. If it is an appropriate means to such an end, the decisions of the Congress as to the degree of the necessity for the adoption of that means, is final. *McCulloch* v. *Maryland, supra,* pp. 421, 423; *Juilliard* v. *Greenman, supra,* p. 450; *Stafford* v. *Wallace,* 258 U. S. 495, 521; *Everard's Breweries* v. *Day,* 265 U. S. 545, 559, 562.

The Committee on Banking and Currency of the House of Representatives stated in its report recommending favorable action upon the Joint Resolution (H. R. Rep. No. 169, 73d Cong., 1st Sess.):

"The occasion for the declaration in the resolution that the gold clauses are contrary to public policy arises out of the experiences of the present emergency. These gold clauses render ineffective the power of the Government to create a currency and determine the value thereof. If the gold clause applied to a very limited number of contracts and security issues, it would be a matter of no particular consequence, but in this country virtually all obligations, almost as a matter of routine, contain the gold clause. In the light of this situation two phenomena which have developed during the present emergency make the enforcement of the gold clauses incompatible with the public interest. The first is the tendency which has developed internally to hoard gold; the second is the tendency for capital to leave the country. Under these circumstances no currency system, whether based upon gold or upon any other foundation, can meet the requirements of a situation in which many billions of dollars of securities are expressed in a particular form of the circulating medium, particularly when it is the medium upon which the entire credit and currency structure rests".

And the Joint Resolution itself recites the determination of the Congress in these words:[6]

"Whereas the existing emergency has disclosed that provisions of obligations which purport to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby, obstruct the power of the Congress to regulate the value of the money of the United States, and are inconsistent with the declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in the payment of debts".

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[6]See Note 1.

Can we say that this determination is so destitute of basis that the interdiction of the gold clauses must be deemed to be without any reasonable relation to the monetary policy adopted by the Congress?

The Congress in the exercise of its discretion was entitled to consider the volume of obligations with gold clauses, as that fact, as the report of the House Committee observed, obviously had a bearing upon the question whether their existence constituted a substantial obstruction to the congressional policy. The estimates submitted at the bar indicate that when the Joint Resolution was adopted there were outstanding seventy-five billion dollars or more of such obligations, the annual interest charges on which probably amounted to between three and four billion dollars. It is apparent that if these promises were to be taken literally, as calling for actual payment in gold coin, they would be directly opposed to the policy of Congress, as they would be calculated to increase the demand for gold, to encourage hoarding, and to stimulate attempts at exportation of gold coin. If there were no outstanding obligations with gold clauses, we suppose that no one would question the power of the Congress, in its control of the monetary system, to endeavor to conserve the gold resources of the Treasury, to insure its command of gold in order to protect and increase its reserves, and to prohibit the exportation of gold coin or its use for any purpose inconsistent with the needs of the Treasury. See *Ling Su Fan* v. *United States, supra.* And if the Congress would have that power in the absence of gold clauses, principles beyond dispute compel the conclusion that private parties, or States or municipalities, by making such contracts could not prevent or embarrass its exercise. In that view of the import of the gold clauses, their obstructive character is clear.

But, if the clauses are treated as "gold value" clauses, that is, as intended to set up a measure or standard of value if gold coin is not available, we think they are still hostile to the policy of the Congress and hence subject to prohibition. It is true that when the Joint Resolution was adopted on June 5, 1933, while gold coin had largely been withdrawn from circulation and the Treasury had declared that "gold is not now paid, nor is it available for payment, upon public or private debts,"[7] the dollar had not

[7]Treasury Statement of May 26, 1933.

yet been devalued. But devaluation was in prospect and a uniform currency was intended.[8] Section 43 of the Act of May 12, 1933 (48 Stat. 51), provided that the President should have authority, on certain conditions, to fix the weight of the gold dollar as stated, and that its weight as so fixed should be "the standard unit of value" with which all forms of money should be maintained "at a parity". The weight of the gold dollar was not to be reduced by more than 50 per centum. The Gold Reserve Act of 1934 (January 30, 1934, 48 Stat. 337), provided that the President should not fix the weight of the gold dollar at more than 60 per cent of its present weight. The order of the President of January 31, 1934, fixed the weight of the gold dollar at 15 5/21 grains nine-tenths fine as against the former standard of 25 8/10 grains nine-tenths fine. If the gold clauses interfered with the congressional policy and hence could be invalidated, there appears to be no constitutional objection to that action by the Congress in anticipation of the determination of the value of the currency. And the questions now before us must be determined in the light of that action.

The devaluation of the dollar placed the domestic economy upon a new basis. In the currency as thus provided, States and municipalities must receive their taxes; railroads, their rates and fares; public utilities, their charges for services. The income out of which they must meet their obligations is determined by the new standard. Yet, according to the contentions before us, while that income is thus controlled by law, their indebtedness on their "gold bonds" must be met by an amount of currency determined by the former gold standard. Their receipts, in this view, would be fixed on one basis; their interest charges, and the principal of their obligations, on another. It is common knowledge that the bonds issued by

[8]The Senate Committee on Banking and Currency, in its Report of May 27, 1933, stated: "By the Emergency Banking Act and the existing Executive orders gold is not now paid, or obtainable for payment, on obligations public or private. By the Thomas amendment currency was intended to be made legal tender for all debts. However, due to the language used doubt has arisen whether it has been made legal tender for payments on gold clause obligations, public and private. This doubt should be removed. These gold clauses interfere with the power of Congress to regulate the value of the money of the United States and the enforcement of them would be inconsistent with existing legislative policy". Sen. Rep. No. 99, 73d Cong., 1st sess.

these obligors have generally contained gold clauses, and presumably they account for a large part of the outstanding obligations of that sort. It is also common knowledge that a similar situation exists with respect to numerous industrial corporations that have issued their "gold bonds" and must now receive payments for their products in the existing currency. It requires no acute analysis or profound economic inquiry to disclose the dislocation of the domestic economy which would be caused by such a disparity of conditions in which, it is insisted, those debtors under gold clauses should be required to pay one dollar and sixty-nine cents in currency while respectively receiving their taxes, rates, charges and prices on the basis of one dollar of that currency.

We are not concerned with consequences, in the sense that consequences, however serious, may excuse an invasion of constitutional right. We are concerned with the constitutional power of the Congress over the monetary system of the country and its attempted frustration. Exercising that power, the Congress has undertaken to establish a uniform currency, and parity between kinds of currency, and to make that currency, dollar for dollar, legal tender for the payment of debts. In the light of abundant experience, the Congress was entitled to choose such a uniform monetary system, and to reject a dual system, with respect to all obligations within the range of the exercise of its constitutional authority. The contention that these gold clauses are valid contracts and cannot be struck down proceeds upon the assumption that private parties, and States and municipalities, may make and enforce contracts which may limit that authority. Dismissing that untenable assumption, the facts must be faced. We think that it is clearly shown that these clauses interfere with the exertion of the power granted to the Congress and certainly it is not established that the Congress arbitrarily or capriciously decided that such an interference existed.

The judgment and decree, severally under review, are affirmed.

No. 270. Judgment affirmed.
Nos. 471 and 472. Decree affirmed.

SUPREME COURT OF THE UNITED STATES.

Nos. 270, 471, 472, 531 and 532.—October Term, 1934.

270	Norman C. Norman, Petitioner, *vs.* The Baltimore and Ohio Railroad Company.	On Writ of Certiorari to the Supreme Court of the State of New York.
471	The United States of America, Reconstruction Finance Corporation, et al., Petitioners, *vs.* Bankers Trust Company and William H. Bixby, Trustees.	On Writs of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.
472	The United States of America, Reconstruction Finance Corporation, et al., Petitioners, *vs.* Bankers Trust Company and William H. Bixby, Trustees.	
531	F. Eugene Nortz, *vs.* The United States.	On Certificate from the Court of Claims.
532	John M. Perry, *vs.* The United States.	On Certificate from the Court of Claims.

[February 18, 1935.]

Mr. Justice McReynolds, dissenting.

Mr. Justice Van Devanter, Mr. Justice Sutherland, Mr. Justice Butler and I conclude that, if given effect, the enactments here challenged will bring about confiscation of property rights and repudiation of national obligations. Acquiescence in the decisions just announced is impossible; the circumstances demand statement of our views. "To let oneself slide down the easy slope offered by the course of events and to dull one's mind against the extent of the danger, . . . that is precisely to fail in one's obligation of responsibility".

Just men regard repudiation and spoliation of citizens by their sovereign with abhorrence; but we are asked to affirm that the Constitution has granted power to accomplish both. No definite dele-

gation of such a power exists; and we cannot believe the farseeing framers, who labored with hope of establishing justice and securing the blessings of liberty, intended that the expected government should have authority to annihilate its own obligations and destroy the very rights which they were endeavoring to protect. Not only is there no permission for such actions; they are inhibited. And no plenitude of words can conform them to our charter.

The Federal government is one of delegated and limited powers which derive from the Constitution. "It can exercise only the powers granted to it". Powers claimed must be denied unless granted; and, as with other writings, the whole of the Constitution is for consideration when one seeks to ascertain the meaning of any part.

By the so-called gold clause—promise to pay in "United States gold coin of the present standard of value", or "of or equal to the present standard of weight and fineness"— found in very many private and public obligations, the creditor agrees to accept and the debtor undertakes to return the thing loaned or its equivalent. Thereby each secures protection, one against decrease in value of the currency, the other against an increase.

The clause is not new or obscure or discolored by any sinister purpose. For more than 100 years our citizens have employed a like agreement. During the War between the States, its equivalent "payable in coin" aided in surmounting financial difficulties. From the housetop men proclaimed its merits while bonds for billions were sold to support the World War. The Treaty of Versailles recognized it as appropriate and just. It appears in the obligations which have rendered possible our great undertakings—public-works, railroads, buildings.

Under the interpretation accepted here for many years, this clause expresses a definite enforceable contract. Both by statute and long use the United States have approved it. Over and over again they have enjoyed the added value which it gave to their obligations. So late as May 2, 1933 they issued to the public more than $550,000,000 of their notes each of which carried a solemn promise to pay in standard gold coin. (Before that day this coin had in fact been withdrawn from circulation, but statutory measure of value remained the gold dollar of 25.8 grains.)

The Permanent Court of International Justice interpreted the clause as this Court had done and upheld it. Cases of Serbian and Brazilian Loans, Publications P. C. I. J., Series A, Nos. 20-21 (1929). It was there declared: "The gold clause merely prevents the borrower from availing itself of a possibility of discharge of the debt in depreciated currency", and "The treatment of the gold clause as indicating a mere modality of payment, without reference to a gold standard of value, would be, not to construe but to destroy it".

In *Feist* v. *Societe Intercommunale Belge d'Electricite,* (1934), A. C. 161, the House of Lords expressed like views.

Gregory v. *Morris,* (1878) 96 U. S. 619, 624, 625—last of similar causes—construed and sanctioned this stipulation. In behalf of all Chief Justice Waite there said:

'The obligation secured by the mortgage or lien under which Morris held was for the payment of gold coin, or, as was said in *Bronson* v. *Rodes,* 7 Wall. (1869) 229, "an agreement to deliver a certain weight of standard gold, to be ascertained by a count of coins, each of which is certified to contain a definite proportion of that weight" and is not distinguishable "from a contract to deliver an equal weight of bullion of equal fineness." . . . We think it clear, that, under such circumstances, it was within the power of the Court, so far as Gregory was concerned, to treat the contract as one for the delivery of so much gold bullion; and, if Morris was willing to accept a judgment which might be discharged in currency, to have his damages estimated according to the currency value of bullion.'

Earlier cases—*Bronson* v. *Rodes,* 7 Wall. 229; *Butler* v. *Horwitz,* 7 Wall. 258; *Dewing* v. *Sears,* 11 Wall. 379; *Trebilcock* v. *Wilson,* 12 Wall. 687; *Thompson* v. *Butler,* 95 U. S. 694—while important, need not be dissected. *Gregory* v. *Morris* is in harmony with them and the opinion there definitely and finally stated the doctrine which we should apply.

It is true to say that the gold clauses "were intended to afford a definite standard or measure of value, and thus to protect against a depreciation of the currency and against the discharge of the obligation by payment of less than that prescribed". Furthermore, they furnish means for computing the sum payable in currency if gold should become unobtainable. The borrower agrees to repay in gold coin containing 25.8 grains to the dollar; and if this cannot be secured the promise is to discharge the obligation

by paying for each dollar loaned the currency value of that number of grains. Thus, the purpose of the parties will be carried out. Irrespective of any change in currency the thing loaned or an equivalent will be returned—nothing more nothing less. The present currency consists of promises to pay dollars of 15 5/21 grains; the Government procures gold bullion on that basis. The calculation to determine the damages for failure to pay in gold would not be difficult. *Gregory* v. *Morris* points the way.

Under appropriate statutes the United States for many years issued gold certificates, in the following form: "This certifies that there have been deposited in the Treasury of The United States of America One Thousand Dollars in gold coin payable to the bearer on demand. This certificate is a legal tender in the amount thereof in payment of all debts and dues public and private."

The certificates here involved—series 1928—were issued under Sec. 6, Act Mar. 14, 1900, 31 Stat. 47, as amended. See U. S. C. A. Title 31, Sec. 429.[1]

In view of the statutory direction that gold coin for which certificates are issued shall be held for their payment on demand "and used for no other purpose", it seems idle to argue (as counsel for the United States did) that other use is permissible under the ancient Act of March 3, 1863.

By various orders of the President and the Treasury from April 5 to December 28, 1933, persons holding gold certificates were required to deliver them, and accept "an equivalent amount of any form of coin or currency coined or issued under the laws of the United States designated by the Secretary of the Treasury". Heavy penalties were provided for failure to comply.

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[1]In his Annual Report, 1926, 80, 81, the Secretary of the Treasury said: "Gold and silver certificates are in fact mere 'warehouse receipts' issued by the Government in exchange for gold coin or bullion deposited in the one case, or standard silver dollars deposited in the other case, or against gold or standard silver dollars, respectively withdrawn from the general fund of the Treasury. . . . Gold certificates, United States notes, Treasury notes of 1890, and Federal reserve notes are directly redeemable in gold". In his letter with the Annual Report, for 1933, 375, he showed that on June 30, 1933, $1,230,717,109 was held in trust against gold certificates and Treasury notes of 1890. The Treasury notes of 1890 then outstanding did not exceed about $1,350,000. Tr. Rep. 1926, 80.

That the holder of one of these certificates was owner of an express promise by the United States to deliver gold coin of the weight and fineness established by statute when the certificate issued, or if such demand was not honored to pay the holder the value in the currency then in use, seems clear enough. This was the obvious design of the contract.

The Act of March 14, 1900, 31 Stat., c. 41, 45, 47, as amended, in effect until January 31, 1934, provided: "That the dollar consisting of 25.8 grains of gold nine-tenths fine, . . . shall be the standard unit of value, and all forms of money issued or coined by the United States shall be maintained at a parity of value with this standard," and also "The Secretary of the Treasury is authorized and directed to receive deposits of gold coin with the Treasurer . . . in sums of not less than twenty dollars, and to issue gold certificates therefor in denominations of not less than ten dollars, and the coin so deposited shall be retained in the Treasury and held for the payment of such certificates on demand and used for no other purpose". See U. S. C. A. Title 31, Section 34, 429.

The Act of February 4, 1910, 36 Stat. c. 25, p. 192, directed "that any bonds and certificates of indebtedness of the United States hereafter issued shall be payable, principal and interest, in United States gold coin of the present standard of value."

By Executive Orders, April 5, and April 20, 1933, the President undertook to require owners of gold coin, gold bullion, and gold certificates, to deliver them on or before May 1st to a Federal Reserve Bank, and to prohibit the exportation of gold coin, gold bullion or gold certificates. As a consequence the United States were off the gold standard and their paper money began a rapid decline in the markets of the world. Gold coin, gold certificates and gold bullion were no longer obtainable. "Gold is not now paid nor is it available for payment upon public or private debts" was declared in Treasury statement of May 27, 1933; and this is still true. All gold coins have been melted into bars.

The Agricultural Adjustment Act of May 12, 1933, 48 Stat., c. 25, pp. 31, 52, 53—entitled "An act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of

such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes" by Section 43 provides that "Such notes [United States notes] and all other coins and currencies heretofore or hereafter coined or issued by or under the authority of the United States shall be legal tender for all debts public and private". Also, that the President by proclamation may "fix the weight of the gold dollar . . . as he finds necessary from his investigation to stabilize domestic prices or to protect the foreign commerce against the adverse effect of depreciated foreign currencies". And further, "such gold dollar, the weight of which is so fixed, shall be the standard unit of value, and all forms of money issued or coined by the United States shall be maintained at a parity with this standard and it shall be the duty of the Secretary of the Treasury to maintain such parity, but in no event shall the weight of the gold dollar be fixed so as to reduce its present weight by more than 50 per centum".

The Gold Reserve Act of January 30, 1934, 48 Stat., c. 6, p. 337, 342, undertook to ratify preceding Presidential orders and proclamations requiring surrender of gold but prohibited him from establishing the weight of the gold dollar "at more than 60 per centum of its present weight". By proclamation, January 31, 1934, he directed that thereafter the standard should contain 15 5/21 grains of gold, nine tenths fine. (The weight had been 25.8 grains since 1837.) No such dollar has been coined at any time.

On June 5, 1933, Congress passed a "Joint Resolution to assure uniform value to the coins and currencies of the United States". 48 Stat. c. 48, p. 112. This recited that holding and dealing in gold affects the public interest and are therefore subject to regulation; that the provisions of obligations which purport to give the obligee the right to require payment in gold coin or in any amount of money of the United States measured thereby obstruct the power of Congress to regulate the value of money and are inconsistent with the policy to maintain the equal value of every dollar coined or issued. It then declared that every provision in any obligation purporting to give the obligee a right to require payment in gold is against public policy and directed that "every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar,

in any coin or currency which at the time of payment is legal tender for public and private debts".

Four causes are here for decision. Two of them arise out of corporate obligations containing gold clauses—railroad bonds. One is based on a United States Fourth Liberty Loan bond of 1918, called for payment April 15, 1934, containing a promise to pay "in United States gold coin of the present standard of value" with interest in like gold coin. Another involves gold certificates, series 1928, amounting to $106,300.

As to the corporate bonds the defense is that the gold clause was destroyed by the Resolution of June 5, 1933; and this view is sustained by the majority of the Court.

It is insisted that the agreement, in the Liberty Bond, to pay in gold also was destroyed by the Act of June 5, 1933. This view is rejected by the majority; but they seem to conclude that because of the action of Congress in declaring the holding of gold unlawful, no appreciable damage resulted when payment therein or the equivalent was denied.

Concerning the gold certificates it is ruled that if upon presentation for redemption gold coin had been paid to the holder, as promised, he would have been required to return this to the Treasury. He could not have exported it or dealt with it. Consequently he sustained no actual damage.

There is no challenge here of the power of Congress to adopt such proper "Monetary Policy" as it may deem necessary in order to provide for national obligations and furnish an adequate medium of exchange for public use. The plan under review in the Legal Tender Cases was declared within the limits of the Constitution but not without a strong dissent. The conclusions there announced are not now questioned; and any abstract discussion of Congressional power over money would only tend to befog the real issue.

The fundamental problem now presented is whether recent statutes passed by Congress in respect of money and credits, were designed to attain a legitimate end. Or whether, under the guise of pursuing a monetary policy, Congress really has inaugurated a plan primarily designed to destroy private obligations, repudiate

national debts and drive into the Treasury all gold within the country in exchange for inconvertible promises to pay, of much less value.

Considering all the circumstances, we must conclude they show that the plan disclosed is of the latter description and its enforcement would deprive the parties before us of their rights under the Constitution. Consequently the Court should do what it can to afford adequate relief.

What has been already said will suffice to indicate the nature of these causes and something of our general views concerning the intricate problems presented. A detailed consideration of them would require much time and elaboration; would greatly extend this opinion. Considering also the importance of the result to legitimate commerce, it seems desirable that the Court's decision should be announced at this time. Accordingly, we will only undertake in what follows to outline with brevity our replies to the conclusions reached by the majority and to suggest some of the reasons which lend support to our position.

The authority exercised by the President and the Treasury in demanding all gold coin, bullion and certificates is not now challenged; neither is the right of the former to prescribe weight for the standard dollar. These things we have not considered. Plainly, however, to coin money and regulate the value thereof calls for legislative action.

Intelligent discussion respecting dollars requires recognition of the fact that the word may refer to very different things. Formerly the standard gold dollar weighed 25.8 grains; the weight now prescribed is 15 5/21 grains. Evidently promises to pay one or the other of these differ greatly in value and this must be kept in mind.

From 1792 to 1873 both the gold and silver dollar were standard and legal tender, coinage was free and unlimited. Persistent efforts were made to keep both in circulation. Because the prescribed relation between them got out of harmony with exchange values, the gold coin disappeared and did not in fact freely circu-

late in this country for 30 years prior to 1834. During that time business transactions were based on silver. In 1834, desiring to restore parity and bring gold back into circulation, Congress reduced somewhat (6%) the weight of the gold coin and thus equalized the coinage and the exchange values. The silver dollar was not changed. The purpose was to restore the use of gold as currency—not to force up prices or destroy obligations. There was no apparent profit for the books of the Treasury. No injury was done to creditors; none was intended. The legislation is without special significance here. See Hepburn on Currency.

The money under consideration in the *Legal Tender Cases,* decided May 1, 1871, 12 Wall. 457, and 110 U. S. 421, were promises to pay dollars, "bills of credit". They were "a pledge of the national credit", promises "by the Government to pay dollars" "the standard of value is not changed." The expectation, ultimately realized, was that in due time they would be redeemed in standard coin. The Court was careful to show that they were issued to meet a great emergency in time of war, when the overthrow of the Government was threatened and specie payments had been suspended. Both the end in view and the means employed, the Court held were lawful. The thing actually done was the issuance of bills endowed with the quality of legal tender in order to carry on until the United States could find it possible to meet their obligations in standard coin. This they accomplished in 1879. The purpose was to meet honorable obligations—not to repudiate them.

The opinion there rendered declares—"The legal tender acts do not attempt to make paper a standard of value. We do not rest their validity upon the assertion that their emission is coinage, or any regulation of the value of money; nor do we assert that Congress may make anything which has no value money. What we do assert is, that Congress has power to enact that the government's promises to pay money shall be, for the time being, equivalent in value to the representative of value determined by the coinage acts or to multiples thereof." What was said in those causes of course must be read in the light of all the circumstances. The opinion gives no support to what has been attempted here.

This Court has not heretofore ruled that Congress may require the holder of an obligation to accept payment in subsequently devalued coins, or promises by the Government to pay in such coins. The legislation before us attempts this very thing. If this is permissible then a gold dollar containing one grain of gold may become the standard, all contract rights fall, and huge profits ap-

pear on the Treasury books. Instead of $2,800,000,000 as recently reported perhaps $20,000,000,000, maybe, enough to cancel the public debt, maybe more!

The power to issue bills and "regulate values" of coin cannot be so enlarged as to authorize arbitrary action, whose immediate purpose and necessary effect is destruction of individual rights.[2] As this Court has said a "power to regulate is not a power to destroy". 154 U. S. 362, 398. The Fifth Amendment limits all governmental powers. We are dealing here with a debased standard, adopted with the definite purpose to destroy obligations. Such arbitrary and oppressive action is not within any Congressional power heretofore recognized.

The authority of Congress to create legal tender obligations in times of peace is derived from the power to borrow money; this cannot be extended to embrace the destruction of all credits.

There was no coin—specie—in general circulation in the United States between 1862 and 1879. Both gold and silver were treated in business as commodities. The Legal Tender Cases arose during that period.

Corporate Bonds—

The gold clauses in these bonds were valid and in entire harmony with public policy when executed. They are property—*Lynch* v. *United States*, 292 U. S. 571, 579. To destroy a validly acquired right is the taking of property—*Osborn* v. *Nicholson*, 13 Wall. 646, 662. They established a measure of value and supply a basis for recovery if broken. Their policy and purpose were stamped with affirmative approval by the Government when inserted in its bonds.

The clear intent of the parties was that in case the standard of 1900 should be withdrawn, and a new and less valuable one set up, the debtor could be required to pay the value of the contents of the old standard in terms of the new currency, whether coin or paper. If gold measured by prevailing currency had declined the debtor would have received the benefit. The Agricultural Adjustment Act of May 12th discloses a fixed purpose to raise the nominal value of farm products by depleting the standard dollar. It authorized the

[2] "It may well be doubted whether the nature of society and of government does not prescribe some limits to the legislative power; and if any be prescribed where are they to be found if the property of an individual fairly and honestly acquired may be seized without compensation." Ch. Justice Marshall in Fletcher *v.* Peck, 6 Cranch. 87, 135.

President to reduce the gold in the standard, and further provided that all forms of currency shall be legal tender. The result expected to follow was increase in nominal values of commodities and depreciation of contractual obligations. The purpose of Section 43 incorporated by the Senate as an amendment to the House Bill was clearly stated by the Senator who presented it.[3] It was the destruction of lawfully acquired rights.

In the circumstances existing just after the Act of May 12th, depreciation of the standard dollar by the Presidential proclamation would not have decreased the amount required to meet obligations containing gold clauses. As to them the depreciation of the standard would have caused an increase in the number of dollars of depreciated currency. General reduction of all debts could only be secured by first destroying the contracts evidenced by the gold clauses; and this the Resolution of June 5th undertook to accomplish. It was aimed directly at those contracts and had no definite relation to the power to issue bills or to coin or regulate the value of money.

To carry out the plan indicated as above shown in the Senate, the Gold Reserve Act followed—January 30, 1934. This inhibited the President from fixing the weight of the standard gold dollar above 60% of its then existing weight. (Authority had been given for 50% reduction by the Act of May 12th.) On January 31st he directed that the standard should contain 15 5/21 grains of gold. If this reduction of 40% of all debts was within the power of Congress and if as a necessary means to accomplish that end, Congress had power by resolution to destroy the gold clauses, the holders of these corporate bonds are without remedy. But we must not forget that if this power exists Congress may readily destroy other obligations which present obstruction to the desired effect of further depletion. The destruction of all obligations by reducing the standard gold dollar to one grain of gold, or brass or nickel or copper or lead will become an easy possi-

[3]He said—"This amendment has for its purpose the bringing down or cheapening of the dollar, that being necessary in order to raise agricultural and commodity prices. . . . The first part of the amendment has to do with conditions precedent to action being taken later.

"It will be my task to show that if the amendment shall prevail it has potentialities as follows: It may transfer from one class to another class in these United States value to the extent of amost $200,000,000,000. This value will be transferred, first, from those who own the bank deposits. Secondly, this value will be transferred from those who own bonds and fixed investments." Cong. Record, April, 1933, pp. 2004, 2216, 2217, 2219.

bility. Thus we reach the fundamental question which must control the result of the controversy in respect of corporate bonds. Apparently in the opinion of the majority the gold clause in the Liberty bond withstood the June 5th Resolution notwithstanding the definite purpose to destroy them. We think that in the circumstances Congress had no power to destroy the obligations of the gold clauses in private obligations. The attempt to do this was plain usurpation, arbitrary and oppressive.

The oft repeated rule by which the validity of statutes must be tested is this—"Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate which are plainly adapted to that end which are not prohibited but consistent with the letter and spirit of the Constitution are constitutional."

The end or objective of the Joint Resolution was not "legitimate." The real purpose was not "to assure uniform value to the coins and currencies of the United States", but to destroy certain valuable contract rights. The recitals do not harmonize with circumstances then existing. The Act of 1900 which prescribed a standard dollar of 25.8 grains remained in force; but its command that "all forms of money issued or coined by the United States shall be maintained at a parity of value with this standard" was not being obeyed. Our currency was passing at a material discount; all gold had been sequestrated; none was attainable. The Resolution made no provision for restoring parity with the old standard; it established no new one.

This Resolution was not appropriate for carrying into effect any power entrusted to Congress. The gold clauses in no substantial way interfered with the power of coining money or regulating its value or providing an uniform currency. Their existence, as with many other circumstances, might have circumscribed the effect of the intended depreciation and disclosed the unwisdom of it. But they did not prevent the exercise of any granted power. They were not inconsistent with any policy theretofore declared. To assert the contrary is not enough. The Court must be able to see the appropriateness of the thing done before it can be permitted to destroy lawful agreements. The purpose of a statute is not determined by mere recitals—certainly they are not conclusive evidence of the facts stated.

Again, if effective, the direct, primary and intended result of the Resolution will be the destruction of valid rights lawfully acquired. There is no question here of the indirect effect of lawful exercise of power. And citations of opinions which upheld such

indirect effects are beside the mark. This statute does not "work harm and loss to individuals indirectly", it destroys directly. Such interference violates the Fifth Amendment; there is no provision for compensation. If the destruction is said to be for the public benefit proper compensation is essential; if for private benefit the due process clause bars the way.

Congress has power to coin money but this cannot be exercised without the possession of metal. Can Congress authorize appropriation without compensation of the necessary gold? Congress has power to regulate commerce, to establish post roads, &c. Some approved plan may involve the use or destruction of A's land or a private way. May Congress authorize the appropriation or destruction of these things without adequate payment? Of course not. The limitations prescribed by the Constitution restrict the exercise of all power.

Ling Su Fan v. *United States,* 218 U. S. 302, supports the power of the legislature to prevent exportation of coins without compensation. But this is far from saying that the legislature might have ordered destruction of the coins without compensating the owners or that they could have been required to deliver them up and accept whatever was offered. In *United States* v. *Lynah,* 188 U. S. 445, 471, this Court said—"If any one proposition can be considered as settled by the decisions of this court it is that although in the discharge of its duties the Government may appropriate property, it cannot do so without being liable to the obligation cast by the fifth amendment of paying just compensation".

Government Bonds—

Congress may coin money; also it may borrow money. Neither power may be exercised so as to destroy the other; the two clauses must be so construed as to give effect to each. Valid contracts to repay money borrowed cannot be destroyed by exercising power under the coinage provision. The majority seem to hold that the Resolution of June 5th did not affect the gold clauses in bonds of the United States. Nevertheless we are told that no damage resulted to the holder now before us through the refusal to pay one of them in gold coin of the kind designated or its equivalent. This amounts to a declaration that the Government may give with one hand and take away with the other. Default is thus made both easy and safe!

Congress brought about the conditions in respect of gold which existed when the obligation matured. Having made payment in

this metal impossible the Government cannot defend by saying that if the obligation had been met the creditor could not have retained the gold; consequently he suffered no damage because of the nondelivery. Obligations cannot be legally avoided by prohibiting the creditor from receiving the thing promised. The promise was to pay in gold, standard of 1900, otherwise to discharge the debt by paying the value of the thing promised in currency. One of these things was not prohibited. The Government may not escape the obligation of making good the loss incident to repudiation by prohibiting the holding of gold. Payment by fiat of any kind is beyond its recognized power. There would be no serious difficulty in estimating the value of 25.8 grains of gold in the currency now in circulation.

These bonds are held by men and women in many parts of the world; they have relied upon our honor. Thousands of our own citizens of every degree not doubting the good faith of their sovereign have purchased them. It will not be easy for this multitude to appraise the form of words which establishes that they have suffered no appreciable damage; but perhaps no more difficult for them than for us. And their difficulty will not be assuaged when they reflect that ready calculation of the exact loss suffered by the Philippine government moved Congress to satisfy it by appropriating, in June 1934, $23,862,750.78 to be paid out of the Treasury of the United States.[4] And see Act May 30, 1934, 48 Stat. 817, appropriating $7,438,000 to meet losses sustained by officers and employees in foreign countries due to appreciation of foreign currencies in their relation to the American dollar.

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[4] AN ACT relating to Philippine currency reserves on deposit in the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury is authorized and directed, when the funds therefor are made available, to establish on the books of the Treasury a credit in favor of the Treasury of the Philippine Islands for $23,862,750.78, being an amount equal to the increase in value (resulting from the reduction of the weight of the gold dollar) of the gold equivalent at the opening of business on January 31, 1934, of the balances maintained at that time in banks in the continental United States by the Government of the Philippine Islands for its gold standard fund and its Treasury certificate fund less the interest received by it on such balances.

Sec. 2. There is hereby authorized to be appropriated, out of the receipts covered into the Treasury under section 7 of the Gold Reserve Act of 1934, by virtue of the reduction of the weight of the gold dollar by the proclamation of the President on January 31, 1934, the amount necessary to establish the credit provided for in section 1 of this Act. Approved, June 19, 1934.

Gold Certificates—

These were contracts to return gold left on deposit; otherwise to pay its value in the currency. Here the gold was not returned; there arose the obligation of the Government to pay its value. The Court of Claims has jurisdiction over such contracts. Congress made it impossible for the holder to receive and retain the gold promised him; the statute prohibited delivery to him. The contract being broken the obligation was to pay in currency the value of 25.8 grains of gold for each dollar called for by the certificate. For the Government to say, we have violated our contract but have escaped the consequences through our own statute, would be monstrous. In matters of contractual obligation the Government can not legislate so as to excuse itself.

These words of Alexander Hamilton ought not to be forgotten—

> "When a government enters into a contract with an individual, it deposes, as to the matter of the contract, its constitutional authority, and exchanges the character of legislator for that of a moral agent, with the same rights and obligations as an individual. Its promises may be justly considered as excepted out of its power to legislate, unless in aid of them. It is in theory impossible to reconcile the idea of a promise which obliges, with a power to make a law which can vary the effect of it". 3 Hamilton's Works, 518, 519.

These views have not heretofore been questioned here. In the *Sinking Fund Cases*, 99 U. S. 700, 719, Chief Justice Waite speaking for the majority declared: "The United States are as much bound by their contracts as are individuals. If they repudiate their obligations, it is as much repudiation, with all the wrong and reproach that term implies, as it would be if the repudiator had been a State or a municipality or a citizen. No change can be made in the title created by the grant of the lands, or in the contract for the subsidy bonds, without the consent of the corporation. All this is indisputable".

And in the same cause, (731, 732) Mr. Justice Strong, speaking for himself, affirmed: "It is as much beyond the power of a legislature, under any pretence, to alter a contract into which the government has entered with a private individual, as it is for any other party to a contract to change its terms without the consent of the person contracting with him. As to its contract the government in all its departments has laid aside its sovereignty, and it stands on the same footing with private contractors".

Can the Government, obliged as though a private person to observe the terms of its contracts, destroy them by legislative changes in the currency and by statutes forbidding one to hold the thing which it has agreed to deliver? If an individual should undertake to annul or lessen his obligation by secreting or manipulating his assets with the intent to place them beyond the reach of creditors, the attempt would be denounced as fraudulent, wholly ineffective.

Counsel for the Government and railway companies asserted with emphasis that incalculable financial disaster would follow refusal to uphold, as authorized by the Constitution, impairment and repudiation of private obligations and public debts. Their forecast is discredited by manifest exaggeration. But, whatever may be the situation now confronting us, it is the outcome of attempts to destroy lawful undertakings by legislative action; and this we think the Court should disapprove in no uncertain terms.

Under the challenged statutes it is said the United States have realized profits amounting to $2,800,000,000.[5] But this assumes that gain may be generated by legislative fiat. To such counterfeit profits there would be no limit; with each new debasement of the dollar they would expand. Two billions might be ballooned indefinitely—to twenty, thirty, or what you will.

Loss of reputation for honorable dealing will bring us unending humiliation; the impending legal and moral chaos is appalling.

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[5]In radio address concerning the plans of the Treasury, August 28, 1934, the Secretary of Treasury, as reported by the Commercial and Financial Chronicle of September 1, 1934, stated:

"'But we have another cash drawer in the Treasury, in addition to the drawer which carries our working balance. This second drawer I will call the 'gold' drawer. In it is the very large sum of $2,800,000,000, representing 'profit' resulting from the change in the gold content of the dollar. Practically all of this 'profit' the Treasury holds in the form of gold and silver. The rest is in other assets.

"'I do not propose here to subtract this $2,800,000,000 from the net increase of $4,400,000,000 in the national debt—thereby reducing the figure to $1,600,000,000. And the reason why I do not subtract it is this: for the present this $2,800,000,000 is under lock and key. Most of it, by authority of Congress, is segregated in the so-called stabilization fund, and for the present we propose to keep it there. But I call your attention to the fact that ultimately we expect this 'profit' to flow back into the stream of our other revenues and thereby reduce the national debt'".